ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 22-0256

JAY SPILLERS,

Petitioner,

v.

MONTANA THIRD JUDICIAL DISTRICT COURT, ANACONDA-DEER LODGE COUNTY, THE HONORABLE RAY J. DAYTON, PRESIDING JUDGE,

Respondent.

ORDER

Petitioner Jay Spillers, via counsel, seeks a writ of supervisory control over the Third Judicial District Court, Anaconda-Deer Lodge County, to reverse its March 3, 2022 Order Granting Motion to Amend Answer in its Cause No. DV-17-74. Spillers alleges the District Court erroneously granted an untimely request from the Montana Department of Public Health and Human Services (MDPHHS), Defendant in the underlying litigation, to amend its answer and add an affirmative defense nearly four years after the deadline the court set in its Scheduling Order. Spillers asserts that this matter is set for trial on May 31, 2022, and that MDPHHS has provided no justification for its failure to plead this affirmative defense sooner. MDPHHS has responded in opposition to Spillers' petition.

On August 11, 2017, Spillers filed a Complaint that alleged MDPHHS discriminated against him on the basis of his disability and sex when it did not interview or hire him for an open administrative assistant position. MDPHHS filed its Answer on January 9, 2018. Pertinent to the present dispute, MDPHHS did not raise "failure to mitigate" as an affirmative defense at that time.

Over the course of the litigation, this case has been set for trial numerous times. Most recently, a jury trial, set for January 31, 2022, was vacated and reset to May 31, 2022.

On January 25, 2022, MDPHHS moved to amend its Answer to include "failure to mitigate" as an affirmative defense. The District Court granted MDPHHS's motion to amend in its March 3, 2022 Order on Motion to Amend. On March 4, 2022, MDPHHS filed its Amended Answer to Complaint, which includes "failure to mitigate" as an affirmative defense. Spillers filed this petition for writ of supervisory control on May 12, 2022, arguing that this Court should take supervisory control, and reverse the Order on Motion to Amend.

Supervisory control is an extraordinary remedy that may be invoked when the case involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate. M. R. App. P. 14(3). The case must meet one of three additional criteria: (a) the other court is proceeding under a mistake of law and is causing a gross injustice; (b) constitutional issues of state-wide importance are involved; or (c) the other court has granted or denied a motion for substitution of a judge in a criminal case. M. R. App. P. 14(3)(a)-(c). Whether supervisory control is appropriate is a case-by-case decision. *Stokes v. Mont. Thirteenth Judicial Dist. Court*, 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754 (citations omitted). Consistent with Rule 14(3), it is the Court's practice to refrain from exercising supervisory control when the petitioner has an adequate remedy of appeal. *E.g., Buckles v. Seventh Judicial Dist. Court*, No. OP 16-0517, 386 Mont. 393, 386 P.3d 545 (table) (Oct. 18, 2016); *Lichte v. Mont. Eighteenth Judicial Dist. Court*, No. OP 16-0482, 385 Mont. 540, 382 P.3d 868 (table) (Aug. 24, 2016).

Spillers asserts he will suffer a gross injustice if this Court does not accept supervisory control in this instance. However, Rule 14(3) also requires that urgency or emergency factors exist that make the normal appeal process inadequate. Spillers merely alleges that failure to exercise supervisory control "would create a situation where this case [sic] would be required to try this case again, before a different jury." Such is true for many successful appeals and does not itself provide a basis for an extraordinary remedy. "[A] writ of supervisory control is not to be used as a means to circumvent the appeal process. Only in the most extenuating circumstances will such a writ be granted." *State ex rel. Ward v. Schmall*, 190 Mont. 1, 617 P.2d 140 (1980). Although Spillers asserts that

an appeal will "waste the valuable resources of both the parties and the courts, and is not in the interests of judicial economy," this Court has repeatedly held that conserving resources, without more, is insufficient grounds to justify supervisory control where a party can seek review of the lower court's ruling on appeal and there is no evidence that relief on appeal would be inadequate. *Yellowstone Elec. Co. v. Mont. Seventh Judicial Dist. Court*, No. OP-19-0348, 397 Mont. 552, 449 P.3d 787 (table) (Aug. 6, 2019).

We conclude that Spillers has not demonstrated that the normal appeal process is an inadequate remedy in this matter. Spillers has not set forth any urgent or emergency factors that would make the normal appeal process inadequate, as M. R. App. P. 14(3) requires.

IT IS THEREFORE ORDERED that Spillers' Petition for a Writ of Supervisory Control is DENIED.

The Clerk is directed to provide immediate notice of this Order to all counsel of record in the Third Judicial District Court, Anaconda-Deer Lodge County, Cause No. DV-17-74, and the Honorable Ray J. Dayton, presiding.

DATED this 24th day of May, 2022.

Chief Justice

Justices