

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA-22-0070

DAVID SNYDERS,
Plaintiff and Appellee,

v.

PROFESSIONAL PROPERTY MANAGEMENT, INC.,
Defendant and Appellant.

On Appeal from the Montana Fourth Judicial District Court
Missoula County, Cause No. DV-21-1272
Before Hon. Robert L. Deschamps, III

**APPELLANT PROFESSIONAL PROPERTY MANAGEMENT, INC.'S
ANSWER BRIEF**

Appearances:

David Sniders
PO Box 101
Missoula, MT 59806
milltownmontana@gmail.com
Pro Se Appellee

Thomas C. Orr
Orr McDonnell Law, PLLC
627 Woody St.
Missoula, MT 59802
Fax: 406-552-05690
tom@omlmt.com
*Attorneys for Appellant Professional
Property Management, Inc.*

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I. Statement of the Issues

1. Whether the District Court erred in affirming the Justice Court's ruling.

II. Statement of the Case

On June 15, 2021, Appellee David Snyders (hereinafter "Mr. Snyders") filed a complaint against Appellant Professional Property Management, Inc. (hereinafter "PPM") in Missoula County Justice Court. In his complaint, he demanded \$3,560.01 (three thousand five hundred sixty dollars and one cent) from PPM for repairs he claimed he had made to the apartment he had rented from PPM for four and a half years and the entirety of his security deposit. Compl., June 15, 2021. PPM answered Mr. Snyders' Complaint on June 25, 2021, generally denying each allegation. PPM's Answer, June 25, 2021. The matter was set for a judge trial before Justice of the Peace Landee N. Holloway on August 25, 2021. Min. Entry, Aug. 25, 2021.

At the judge trial on August 25, 2021, both parties presented evidence and witness testimony. The Justice Court found in favor of PPM "that no further security deposit" was owed to Mr. Snyders. PPM requested attorneys' fees which the Justice Court granted pending receipt of an affidavit of attorney's fees to consider. Min. Entry, Aug. 25, 2021. On October 8, 2021, the Justice Court issued its order granting

fees and finding that PPM “properly applied [Mr. Snyders’] security deposit to cleaning and damages there were his responsibility and refunded the balance to him as required by law.” J. Awarding Att’y Fees 1- 2, Oct. 8, 2021.

Shortly thereafter, on October 18, 2021, Mr. Snyders’ appealed the Justice Court’s decision to Missoula County District Court. Mr. Snyders filed his Opening Brief on November 23, 2022, listing two claims of error on the part of the Justice Court: 1) that the Justice Court had not properly reviewed Mr. Snyders’ discovery and 2) the Justice Court did not provide a recess or continue the August 25, 2021, trial. Snyders’ Opening Br., Nov. 23, 2021. On February 1, 2022, before PPM had filed a response, the Missoula County District Court issued an order denying Mr. Snyders’ appeal. Order. Mr. Snyder appealed.

III. Statement of the Facts

On February 8, 2017, Mr. Snyders entered into a Residential Lease-Rental Agreement with Clark Fork Realty to rent an apartment located at 2010 South 8th Street West, Apt. A., Missoula, Montana 59801. Ex. 1, Snyders’ Opening Br., Nov. 23, 2021. On or about March 9, 2017, Mr. Snyders returned a document entitled “Manager-Tenant State of Condition of the Rental Property.” Ex. 2, Snyders’ Opening Br., Nov. 23, 2021.

At some point before the end of his tenancy, PPM took over management of

the dwelling from Clark Fork Realty.

Mr. Snyders vacated the apartment in May of 2021 and PPM inspected it on May 6, 2021. PPM noted extensive cleaning and damage issues. Ex. 4, Snyders' Opening Br., Nov. 23, 2021. PPM further provided Mr. Snyder with a document entitled "List of Damages—Security Deposit Refund Disclosure." Ex. 3, Snyders' Opening Br., Nov. 23, 2021. This document, together with a refund of \$84.99, was mailed to Mr. Snyders on June 4, 2021. *Id.* The expenses incurred by PPM to correct the cleaning deficiencies were supported by invoices. See, Ex. 5. Snyders' Opening Br., Nov. 23, 2021.

Mr. Snyders filed suit against PPM in the Justice Court on June 17, 2021, seeking to recover his entire security deposit plus costs for repairs and upgrades he had allegedly made to the apartment during his four-and-half-year tenancy. PPM filed their answer on June 25, 2021. On August 25, 2021, the Justice Court held a hearing on the complaint. On October 8, 2021, the Justice Court entered its J. Awarding Att'y Fees, Oct. 8, 2021. The Court specifically found that Defendant, "Professional Property Management properly applied Plaintiff David Snyders' security deposit to cleaning and damages that were his responsibility and refunded the remaining balance to him as required by law." *Id.*

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IV. Standard of Review

The Missoula County Justice Court is a Justice Court of Record. The rule applicable to appeals from Justice Courts of Record is set forth in Mont. Code Ann.

§ 3-10-115. That statute provides:

(1) A party may appeal to district court a judgment or order from a justice's court of record. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a justice's court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the justice's court of record.

Mont. Code Ann. § 3-10-115.

When a district court is acting as an appellate court, it is not in a position to make findings of fact or discretionary trial court rulings; rather, the court is confined to review of the record and questions of law. *Hines v. Topher Realty, LLC*, 2018 MT 44, ¶ 10,390 Mont. 352, 413 P.3d 813. In an appeal from a justice court established as a court of record, the district court functions as an intermediate appellate court

and, as such, is confined to review of the record and questions of law. *State v. Hodge*, 2014 MT 306, ¶ 11, 377 Mont. 123, 339 P.3d 8.

The district court reviews the justice court's factual findings for clear error and its legal conclusions for correctness. *State v. Seaman*, 2005 MT 307, ¶ 10, 329 Mont. 429, 124 P.3d 1137. This Court must examine the record independently of the justice court's decision, reviewing the trial court's findings of fact under the clearly erroneous standard and its discretionary rulings for abuse of discretion. *Hines, supra*, at ¶11, citing *Summers v. Crestview Apts.*, 2010 MT 164, ¶ 11, 357 Mont. 123, 236 P.3d 586; *State v. Warclub*, 2005 MT 149, ¶¶ 21-23, 327 Mont. 352, 114 P.3d 254.

When acting in its appellate capacity, the district court reviews any factual findings under the clearly erroneous standard, any discretionary rulings for abuse of discretion, and both legal conclusions and mixed questions of law and fact under the de novo standard. Mont. Code Ann. §§ 3-5-303, 3-10-115. *Stanley v. Lemire*, 2006 MT 304, ¶ 25, 334 Mont. 489, 148 P.3d 643.

V. Summary of Argument

Mr. Snyders claims four issues in his appeal to this Court. First, that PPM did not follow Mont. Code Ann. § 70-25-206. Second, the Justice Court provided Mr. Snyders with incorrect information regarding the procedures for the August 25, 2021 trial. Third, the District Court held that it was Mr. Snyders' responsibility to request

a recess or continuance during the August 25, 2021 trial, not that of the Justice of the Peace. Fourth, Mr. Snyders appeals the dicta of the District Court’s holding that “it is reasonable to expect *pro se* litigants to adhere to procedural rules” and reiterates his claim that the Justice Court provided him with incorrect information regarding procedures for the August 25, 2021 hearing.

PPM has distilled Mr. Snyders’ four issues into three points of discussion for this brief and will argue the following: First, the claim that PPM did not follow Mont. Code. Ann. § 70-25-206 is not an appealable issue as it is not a part of the original underlying case or the District Court’s order from which Mr. Snyders appeals. Second, the District Court’s ruling that it was Mr. Snyders’ responsibility to request a recess or continuance during the Justice Court Trial should be upheld. And third, that the District Court’s “ruling” that *pro se* litigants should adhere to procedural rules should be upheld.

VI. Argument

A. The claim that PPM did not follow Mont. Code. Ann. § 70-25-206 is not a part of the original underlying cases and thus not available for appeal.

Mr. Snyders’ Brief does not address this issue other than to make a generic reference to this claim in the Statement of the Issue section of his brief. Similarly,

Mr. Snyders failed to raise this issue in the District Court. Finally, nowhere in Mr. Snyders' Legal Argument in these proceedings is this claim set forth or argued.

It is the general rule of this Court to refuse to consider arguments raised for the first time on appeal because 'it is fundamentally unfair to fault the trial court for failing to rule on an issue it was never given the opportunity to consider.' ” *Kurtzenacker v. Davis Surveying, Inf.*, 2012 MT 105 ¶17, 278 Mont. 71, 276 P.3d 1002, *citing*, *City of Missoula v. Moore*, 2011 MT 61, ¶ 13, 360 Mont. 22, 251 P.3d 679 (citing *State v. LaFreniere*, 2008 MT 99, ¶ 11, 342 Mont. 309, 180 P.3d 1161). Because this issue was not raised at trial, and the District Court had no opportunity to consider or rule on the issue, this Court should address the matter now. *Id.*

B. The District Court's ruling that it was Mr. Snyders' responsibility to request a recess or a continuance during the Trial should be upheld.

Mr. Snyders' sole legal argument is that “[t]he relevant statute is Montana Code 46-16-702, “A new trial can be ordered by the court without motion” in the interest of justice and there is no time limit in that situation.” *Opening Brief* at 7. Aside from the facts that the statute Mr. Snyders cites applies to criminal proceedings, and his failure to set forth any facts or legal theory which might support

this claim, even if he had cited the correct rule, nowhere in his district court opening brief is there any reference whatsoever to a request for a new trial.

Because Mr. Snyders did not raise this issue at trial in the justice court or on appeal in the district court, and he cannot address it here. *Id.*

C. The District Court’s “ruling” that *pro se* litigants should adhere to procedural rules should be upheld.

Mr. Snyders has represented before both this Court and the District Court. In Montana, *pro se litigants* are generally afforded a certain amount of latitude. *Wittich Law Firm P.C. v. O’Connell*, 2013 MT 122, ¶26, citing, *Greenup v. Russell*, 2000 MT 154, ¶ 15, 300 Mont. 136, 3 P.3d 124. It is also the rule, however, that the latitude, “cannot be so wide as to prejudice the other party.” *Id.* Further, the district court’s ruling that *pro se* litigants should adhere to procedural rules” is an accurate statement of Montana law. *Wittich, supra, citing Greenup*, ¶ 15.

Mr. Snyders did not raise this issue in the justice court or in his appeal brief filed in the district court. Having failed to properly raise this issue in the proceedings below, this Court need not address it here. *Kurtzenacker v. Davis Surveying, Inf.*, 2012 MT 105 ¶17, 278 Mont. 71, 276 P.3d 1002, [*internal citations omitted*].

VIII. Conclusion

The Court should dismiss Mr. Snyders’ appeal. Nowhere in his brief does he point to any rulings let alone any that were clearly erroneous. Likewise, he fails to

show how the court abused its discretion in anything it did. Mont. Code §§ 3-5-303, 3-10-115. *Stanley v. Lemire*, 2006 MT 304, ¶ 25, 334 Mont. 489, 148 P.3d 643.

Rule 23(a)(4) of the Montana Rules of Appellate Procedure requires that an appellant present a concise, cohesive argument which “contain[s] the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and pages of the record relied on.”

As stated above, Mr. Snyders’ brief contains general contentions of impropriety but no citations to the record or supporting legal authority. The Montana Court has repeatedly held that it will not consider unsupported issues or arguments. *In re Custody of Krause*, 2001 MT 37, ¶ 32, 304 Mont. 202, 19 P.3d 811. Likewise, this Court is under no obligation to locate authorities or formulate arguments for a party in support of positions taken on appeal. *In re B.P.*, 2001 MT 219, ¶ 41, 306 Mont. 430, 35 P.3d 291. Mr. Snyders’ failure to comply with Rule 23(a)(4), M.R. App. P., is fatal to his appeal. *State v. Blackcrow*, 1999 MT 44, ¶ 33, 293 Mont. 374, 975 P.2d 1253.

While dismissal is a harsh result, it is imperative when, as is the case here, an appellant’s filing can neither be comprehended nor realistically responded to by the opposing party. See *City of Whitefish v. Hansen*, 237 Mont. 105, 771 P.2d 976 (1989). Mr. Snyders simply has not met his burden in this regard. Accordingly, this Court should dismiss the appeal for failing to establish any error and affirm the decision of the District court.

Certificate of Compliance

Pursuant to M.R. App. P. 11(4)(e), I certify that this *Appellant's Answer Brief* is printed with a proportionately spaced Times New Roman text typeface of 14 points and is double-spaced, except for footnotes which are single-spaced in 12-point type. The word count, calculated by Microsoft Word for Office 365, is fewer than 10,000 words, exclusive of the tables of contents and authorities.

DATED this 15th day of July 2022.

ORR M^cDONNELL LAW, PLLC

/s/ Thomas C. Orr

By:

Thomas C. Orr
Attorney for Appellant

Certificate of Service

I, the undersigned, hereby certify and affirm that a true and correct copy of the foregoing was provided at Missoula, Montana this 15th day of July 2022 to Appellee by U.S. First Class Mail.

ORR M^cDONNELL LAW, PLLC

/s/ Thomas C. Orr

By: _____
Thomas C. Orr
Attorney for Appellant

CERTIFICATE OF SERVICE

I, Thomas Charles Orr, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 07-15-2022:

David Snyders (Appellant)
PO Box 101
Missoula MT 59806
Service Method: Conventional

Electronically signed by Cathryn Arno on behalf of Thomas Charles Orr
Dated: 07-15-2022