

IN THE SUPREME COURT OF THE  
STATE OF MONTANA

Case No. DA 23-0135

ISAAC DUPUIS,

Plaintiff/Appellant,

STATE OF MONTANA,

Defendant/Appellee.

---

*APPELLEE'S RESPONSE BRIEF*

---

Appeal from the Montana Twentieth Judicial District Court, Lake County  
Cause No. DV-22-144, Hon. Molly Owen

---

Michael O'Brien, Esq.  
Logan Nutzman, Esq.  
ST. PETER LAW OFFICE, P.C.  
2620 Radio Way  
P.O. Box 17255  
Missoula, MT 59808  
Telephone: (406) 728-8282  
Facsimile: (406) 728-8141  
[mike@stplawoffices.com](mailto:mike@stplawoffices.com)  
*Attorney for Appellant*

Mackenzie Bradt  
Risk Management and Tort  
Defense Division  
P.O. Box 200124  
Helena, MT 59620  
(406) 444-945  
[Mackenzie.Bradt2@mt.gov](mailto:Mackenzie.Bradt2@mt.gov)  
*Attorney for Appellee*

## TABLE OF CONTENTS

	<b>Page</b>
I. ISSUES PRESENTED .....	1
II. STATEMENT OF THE CASE.....	1
III. FACTUAL AND PROCEDURAL BACKGROUND .....	2
IV. STANDARDS OF REVIEW .....	4
V. SUMMARY OF THE ARGUMENT .....	5
VI. ARGUMENT .....	6
VII. CONCLUSION .....	13
CERTIFICATE OF COMPLIANCE .....	14
CERTIFICATE OF SERVICE .....	15

## TABLE OF AUTHORITIES

Cases	Page(s)
<i>Harrington v. Energy W. Inc.</i> , 2015 MT 233, ¶7, 380 Mont. 298, 356 P.3d 441.....	4
<i>Sinclair v. Burlington Northern &amp; Sante Fe Ry.</i> , 2008 MT 424, ¶ 25, 347 Mont. 395, 200 P.3d 46.....	4
<i>Nye v. Bd. Of Livestock</i> , (Mont. 1982), 196 Mont. 222, 226, 639 P.2d 498, 500.....	6
<i>Northern Plains Resource Council v. Board of Health &amp; Env'tl. Sciences</i> , (Mont. 1979), 184 Mont. 466, 471, 603 P.2d 684, 687.....	6
<i>Wheelsmith Fabrication, Inc. v. Montana Dep't of Labor &amp; Indus.</i> , 2000 MT 27, ¶ 17, 298 Mont. 187, 993 P.2d 713-6.....	6
<i>Brilz v. Metro. Gen. Ins. Co.</i> , 2012 MT 184, ¶ 22, 366 Mont. 78, 285 P.3d 494.....	8, 10
<i>Poplar elementary School District No. 9 v. Froid Elementary School District No. 65</i> , 2020 MT 216, ¶ 38, 401 Mont. 152, 471 P.3d 57.....	8
<i>Koppen v. Bd. Of Med. Exam'rs</i> , (Mont. 1988) 233 Mont. 214, 218-19, 759 P.2d 173, 175-76.....	11
<i>Butz v Economou</i> , (Mont. 1978) 438 U.S. 478, 511-13, 515, 98 S. Ct. 2894, 2913, 2915, 57 L. Ed. 2d 895.....	11
<i>Nelson v. State</i> , 2008 MT 336 ¶¶ 16-17, 346 Mont. 206, 195 P.3d 293.....	11

**Statutes**

§ 4(2), Mont. Const. Art VII,.....6

§ 39-51-2410, Mont. Code Ann.....6, 7, 9, 10

§ 41(b), Mont. Rule Civ. Proc.....9, 10

§ 2-15-102(10)(a)-(c), (k), Mont. Code Ann..... 11

§ 2-15-1704, Mont. Code Ann.....11

§ 39-51-310, Mont. Code Ann.....12

**Other Authority**

*Restatement (Second) of Judgments* § 19 cmt. a.....10

## **ISSUES PRESENTED**

Whether the district court properly dismissed the Complaint based on lack of subject matter jurisdiction, *res judicata* and collateral estoppel, and quasi-judicial immunity.

## **STATEMENT OF THE CASE**

Mr. Dupuis applied for and received unemployment benefits in 2020. In 2021, his benefits were redetermined based on new information Mr. Dupuis provided to the State. He appealed the redetermination of his benefits and was found ineligible. He petitioned the district court for judicial review, but the petition was served more than 60 days after filing and it was dismissed as untimely. He did not appeal the district court's decision, rather, he filed the Complaint making the same arguments in order to circumvent his untimely filing.

## FACTUAL AND PROCEDURAL BACKGROUND

In July 2020, at the beginning of the COVID-19 pandemic, Mr. Dupuis opened an initial claim for unemployment benefits. (App. 1, p. 5). He requested benefits beginning July 25<sup>th</sup>, 2020, and continued to request them through January 30<sup>th</sup>, 2021. *Id.* Although the availability to work is a requirement to receive benefits, in several of Mr. Dupuis' claims for benefits he reported that he was unavailable for work. (App. 1, p. 6). Because Mr. Dupuis reported that he was unavailable to work, he had not in fact met the requirements to receive benefits. *Id.* Upon several redeterminations, the State properly found him ineligible to receive benefits during a portion of the benefit period. *Id.*

Mr. Dupuis contested the redeterminations in an administrative proceeding before the Unemployment Insurance Appeals Board (Board). (App. 5, p. 77). The Board heard the matter and upheld the decision. *Id.* Mr. Dupuis then filed a Petition for Judicial Review in Lake County Judicial District on August 11<sup>th</sup>, 2021. (App. 8, p. 100). In the Petition, Mr. Dupuis asserted that his due process rights were violated by the Board, where he was “not provided appropriate notice” regarding the inquiries that were made during the hearing. *Id.* In his request for relief he asked the court to declare that he was “entitled to all unemployment benefits received from the State of Montana.” (App. 8, p. 100, 101).

Mr. Dupuis' petition was not served until October 12, 2021, more than a month after the deadline to serve, September 22<sup>nd</sup>, 2021. (Appendix 8, p. 98). It was dismissed for lack of timely service, and he did not appeal. *Id.* On August 11<sup>th</sup>, 2022, filed a complaint in Lake County Judicial District to again contest the denial of his benefits. (Appendix 5, p. 76). To be clear, Mr. Dupuis' Opening Brief refers to a "second petition", however, only one petition was filed in this matter and Appellee interprets this to be a reference to the Complaint that was filed based on the same allegations in the Petition. (Appellant's Opening Br.). In his complaint, Mr. Dupuis asserted a claim that his due process rights were violated and also a claim for negligence. (App. 5, p. 79). He requested in the Complaint that he be "entitled to all unemployment benefits received from the State of Montana." (App. 5, p. 81). The Honorable Judge Owens granted the State's motion to dismiss the Complaint, reasoning that, "There is no further jurisdiction of the Court that may be exercised. The claims were previously litigated to a final judgement and cannot be relitigated here. Even assuming jurisdiction and relitigation the claims were permissible quasi-judicial immunity applies." (Appendix 7, p. 86). Mr. Dupuis filed this appeal following the district court's decision.

## STANDARDS OF REVIEW

Whether a court lacks subject matter jurisdiction to adjudicate a controversy is a question of law reviewed de novo for correctness. *Harrington v. Energy W. Inc.*, 2015 MT 233, ¶7, 380 Mont. 298, 356 P.3d 441.

A district court's determination that a complaint has failed to state a claim for which relief can be granted is a conclusion of law to be reviewed *de novo* for correctness. *Sinclair v. Burlington Northern & Sante Fe Ry.*, 2008 MT 424, ¶ 25, 347 Mont. 395, 200 P.3d 46.

## SUMMARY OF THE ARGUMENT

The district court correctly held that the State is entitled to dismissal of Dupuis' claims for four independent reasons. First, the District Court correctly concluded it lacked subject matter jurisdiction over Dupuis' Complaint because he was required to follow the legislatively created administrative process. Following the dismissal of Mr. Dupuis' Petition for Judicial Review with prejudice, the district court no longer had jurisdiction over his claims in a subsequent lawsuit.

Second, his claims were further barred by *res judicata* as he had already received a final judgement on the merits of the exact claims asserted in his petition for judicial review.

Third, his claims were barred by collateral estoppel as the claims dismissed in his petition were the same issues raised in his complaint.

Fourth, quasi-judicial immunity applied, and prohibited his claims against the Board. The Board is a quasi-judicial board per statute and is sued based on its decision making, therefore it is immune to his claims.

## ARGUMENT

### **I. Mont. Code Ann. § 39-51-2410 provides the exclusive remedy to challenge a decision by the Board.**

The district court correctly concluded it did not have jurisdiction over a Complaint because the claims are subject to the administrative process provided by statute and limited to judicial review. Mont. Code Ann. § 39-51-2410. Agency decisions are subject to judicial review as determined by the legislature. Mont. Const. Art. VII, § 4(2); *Nye v. Bd. Of Livestock* (Mont. 1982), 196 Mont. 222, 226, 639 P.2d 498, 500. The legislature may limit or deny judicial review. *Northern Plains Resource Council v. Board of Health & Env'tl. Sciences* (Mont. 1979), 184 Mont. 466, 471, 603 P.2d 684, 687. Mont. Code Ann. § 39-51-2410(5) limits a district court's jurisdiction on judicial review of unemployment claims.

In August of 2021, Mr. Dupuis filed a petition for judicial review based on the Board's redeterminations of his claims for benefits. However, the petition was dismissed as Mr. Dupuis failed to fulfill the service requirement of Mont. Code Ann. § 39-51-2410, and Mr. Dupuis did not appeal, ending the court's jurisdiction to hear the matter.

After the district court dismissed his petition, Mr. Dupuis filed a complaint in district court alleging the same facts as his petition. The Legislature has provided judicial review as the exclusive path for an appeal of the Board's

decision. Mont. Code Ann. § 39-51-2410. Mr. Dupuis pursued judicial review but abandoned it after the district court determined his petition was untimely. The district court did not have jurisdiction consider a brand-new Complaint, outside of the administrative and judicial review process. The district court was correct in finding that no jurisdiction existed over the complaint. The Court should affirm the district court for this reason alone.

## **II. *Res judicata* and Collateral Estoppel preclude Mr. Dupuis' claims.**

The claims in Mr. Dupuis' complaint were identical to the claims asserted in his petition for judicial review. (App. 4 p. 73-74, App. 5 p. 76-81). Both *res judicata* and collateral estoppel provide for the definite end of litigation where parties choose wage collateral attacks on final judgements. *Baltrusch v Baltrusch*, 2005 MT 52, ¶ 15, 331 Mont. 28<sup>8</sup>, 288, 130 P.3d 1267, 1273. *Res Judicata* “[b]ars relegation of a claim that the party has already had an opportunity to litigate, while collateral estoppel bars the reopening of an issue that has been litigated and determined in a prior suit.” *Id.* *Res Judicata* applies where: (1) the parties or their privies are the same, (2) the subject matter is the same, (3) the issues related to the subject matter are the same, (4) the capacities of the person are the same in reference to the subject matter and the issues between them, and (5) a valid final judgment has been entered on the merits in the first action by a court of competent

jurisdiction. *Brilz v. Metro. Gen. Ins. Co.*, 2012 MT 184, ¶ 22, 366 Mont. 78, 285 P.3d 494.

Collateral estoppel bars a subsequent claim where: (1) the identical issue raised was previously decided in a prior litigation; (2) a final judgement on the merits was issued in the prior adjudication; (3) the party against whom collateral estoppel is now asserted was a party or in privity with a party to the prior adjudication; and (4) the party against whom preclusion is asserted was afforded a full and fair opportunity to litigate any issues which may be barred. *Id.* at ¶ 18.

Where issues were litigated, and there was a failure to pursue an appeal, the district court final judgement bars relitigating the issues in a subsequent action. *Poplar elementary School District No. 9 v. Froid Elementary School District No. 65*, 2020 MT 216, ¶ 38, 401 Mont. 152, 471 P.3d 57 (failure to pursue appeal to the Montana Supreme Court resulted in final decision and party was collaterally estopped from relitigating the claim).

All the issues in the Complaint were the subject of the petition for judicial review—specifically, did the hearing officer erroneously determine entitlement to benefits, and did the Board erroneously affirm the decision of the hearing officer? The sub-issues—did the hearing officer and the Board violate due process by failing to properly notice all the issues and time frames subject to redetermination

of the employment benefits; making improper inquiry and findings on whether Mr. Dupuis was self-isolating and thus unavailable for work; and did the Board violate due process by relying on a non-existent rule covering quarantining, and then speculating on the applicability of a different rule covering quarantining—are the same as well. In the relief demanded sections of both his Complaint and Petition for Judicial review Mr. Dupuis requests the Court determine that he is entitled to “all unemployment benefits received from the State of Montana.” (Compl. As Prayer for Relief p. 6, ¶ 2; Pet. At p. 2, ¶ 6.)

Mr. Dupuis argues that dismissal of the petition was not a final judgement on the merits, and therefore the district court erred in dismissing the Complaint based on both collateral estoppel and *res judicata*. (Appellant’s Br., p. 12). However, Mont. Rule Civ. Proc. 41(b) is clear that “Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule -- except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19 -- operates as an adjudication on the merits.” The Petition was dismissed under Mont. Code Ann. § 39-51-2410 which states that “the petition must be served on the commissioner of labor and industry and all interested parties in the manner provided in the Montana Rules of Civil Procedure within 30 days of filing the petition.” There is no dispute that Mr. Dupuis failed to serve his petition

on time. Therefore, the district court was correct to dismiss the petition under Mont. Code Ann. § 39-51-2410. Even though the district court's dismissal did not explicitly state whether it was a final decision on the merits under Mont. Rule Civ. Proc. 41(b) it operated as an adjudication on the merits.

In *Brilz*, this Court found that even though the order disposing of the plaintiff's claim involved an analysis of whether she had even pleaded such a claim, and did not consider the substance of the claim itself, it was a final judgement on the merits. *Brilz*, 2012 MT 184, ¶ 29. This Court has further explained that,

“The prototypical case is one in which the merits of the claim are in fact adjudicated against the plaintiff after trial of the substantive issues. As the Restatement notes, however, judgments not passing directly on the substance of the claim have increasingly come to operate as a bar (and, for this reason, the Restatement eschews the "on the merits" terminology due to its possibly misleading connotations).” *Brilz*, 2012 MT 184, ¶ 27, quoting *Restatement (Second) of Judgments* § 19 cmt. a.

Therefore, the dismissal from the district court was a final judgement on the merits and satisfies the elements test for purposes of *res judicata*.

### **III. Quasi-judicial immunity bars Mr. Dupuis' claims because the Board's determination of ineligibility is a quasi-judicial function of a quasi-judicial entity.**

Quasi-judicial immunity is a common law immunity afforded to state agencies or departments when exercising a quasi-judicial function. *See Koppen v. Bd. Of Med. Exam'rs*, 233 Mont. 214, 218-19, 759 P.2d 173, 175-76 (1988) (citing *Butz v Economou*, 438 U.S. 478, 511-13, 515, 98 S. Ct. 2894, 2913, 2915, 57 L. Ed. 2d 895 (1978)); *Nelson v. State*, 2008 MT 336 ¶¶ 16-17, 346 Mont. 206, 195 P.3d 293.

State law defines a quasi-judicial function as “an adjudicatory function exercised by an agency, involving the exercise of judgement and discretion in making determinations in controversies.” This includes “interpreting, applying, and enforcing existing rules and laws”; “granting or denying privileges, rights, or benefits”; “issuing, suspending or revoking licenses, permits, and certificates”; and “any other act necessary to the performance of a quasi-judicial function.” Mont. Code Ann. § 2-15-102(10)(a)-(c), (k).

The Board is a quasi-judicial board per statute. Mont Code Ann. § 2-15-1704. The function of the Board is to “act in a quasi-judicial capacity for the hearing of disputes concerning the administration of unemployment insurance

laws.” Mont. Code. Ann. § 39-51-310. All of the allegations in the Complaint concern quasi-judicial determinations made by the Board with respect to his unemployment benefits. Therefore, the District Court was correct in determining quasi-judicial immunity applied and the Board was immune to such claims.

Appellant argues that the District Court’s decision to dismiss the Complaint on the basis of quasi-judicial immunity would leave no recourse for a violation by the Board of one’s constitutional rights. First this argument is irrelevant as quasi-judicial immunity applies irrespective of alleged equitable arguments. Second, this argument misses the fact that Appellant had and took advantage of opportunity to bring his alleged constitutional violation in his Petition. He could have timely served his petition. He could have appealed the district court’s dismissal of his petition. Petitioner's failure to abide by statutory requirements, failure to appeal, and failure to engage in the process provided does not permit a tort claim for damages against a quasi-judicial board based on a disagreement with its decision. The district court correctly concluded that Mr. Dupuis’ claims against the Board were barred by absolute quasi-judicial immunity.

#### **IV. Mr. Dupuis has raised new issues on appeal that cannot be considered.**

It is well-established that [this Court] will not address issues on appeal that were not properly raised in the district court. *LHC, Inc. v. Alvarez*, 2007 MT 123, ¶

20, 337 Mont. 294, ¶ 20, 160 P.3d 502, ¶ 20. Here, Mr. Dupuis failed to assert any of the issues in his brief in his district court filings. (Appellant's Br. p. 1-15). The arguments he raises regarding whether the petition was dismissed with prejudice, whether the judgement was dismissed on the merits, and whether quasi-judicial immunity shields the Board from §1983 claims are all new issues as of his appeal. Therefore, the Court should decline to address Mr. Dupuis' newly asserted arguments.

### CONCLUSION

This Court should affirm the district court's judgement based on lack of subject matter jurisdiction, *res judicata* and collateral estoppel and quasi-judicial immunity. The Court should refrain from addressing the new arguments he has raised on appeal.

DATED this 7<sup>th</sup> day of August 2023.

By: /s/ Mackenzie Bradt  
Mackenzie Bradt  
*Attorney for Appellee*

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with proportionally spaced Times New Roman typeface of 14 points, is double spaced; has left, right, top and bottom margins at one inch and has word count of 2,557 words, as calculated by Microsoft Word, excluding the Table of Contents, Table of Authorities and Certificate of Compliance, which does not exceed the 10,000 word limit.

Dated this 7<sup>th</sup> day of August 2023

By: /s/ Mackenzie Bradt

Mackenzie Bradt

*Attorney for Appellee*

## **CERTIFICATE OF SERVICE**

I hereby certify that I served a full, true and accurate copy of the foregoing document on the 7<sup>th</sup> day of August 2023, to the following by electronic filing service:

Michael O'Brian, Esq.  
Logan Nutzman, Esq.  
St. Peter Law Offices, P.C.  
2620 Radio Way  
P.O. Box 17255  
Missoula, MT 59808

## CERTIFICATE OF SERVICE

I, Mackenzie Frances Bradt, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 08-07-2023:

Michael Hawkins O'Brien (Attorney)  
2620 Radio Way  
P.O. Box 17255  
Missoula MT 59808  
Representing: Isaac Dupuis  
Service Method: eService

Logan Alan Nutzman (Attorney)  
2620 Radio Way  
Missoula MT 59808  
Service Method: eService  
E-mail Address: logan@stplawoffices.com

Electronically Signed By: Mackenzie Frances Bradt  
Dated: 08-07-2023