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STATE OF MONTANA

Case Number: DA 23-0219

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IN THE SUPREME COURT OF THE STATE OF MONTANA
 Supreme Court Cause No. **DA 23-0219**

Miki Adams)	
)	
Appellee-Petitioner,)	
vs.)	
)	Dirk Adams Reply Brief
Dirk Adams,)	for Case DA 23-0219
)	(Related to Cases DA 22-
Appellant-Respondent)	0533 and DA 23-0279)
)	
)	
)	

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

Miki Adams)	Cause No.: DR-20-43
)	
Petitioner,)	Hon. Y. LAIRD
vs.)	
)	
Dirk Adams,)	
)	
Respondent)	
)	
)	
)	
)	

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Legal Argument

Overview

To set the stage, Miki testified repeatedly over the course of this dissolution proceeding from 2020 through 2023 that Dirk has made no contact with her. Miki testified that there was no contact at a December 30, 2020, hearing (12/30/2020 Hearing Transcript at pg. 121). Miki did not allege at trial on March 31-April 1, 2021, that Dirk had contacted her. In addition, on April 1, 2021, she drove to the ranch and parked at Dirk's house and approached him within three feet at the door. She would not back away and Dirk had to ask counsel Ellington who was also there to have her client move away. On October 25, 2021, Miki broke into Dirk's house three times over 18 hours, including one sojourn after dark and rummaged around in the house. The District Court (the Hon. Judge Oldenburg subsequently ordered her to never return to the ranch). On February 16, 2022, Miki testified that Dirk had not attempted to contact her. (2/16/2022 Hearing Transcript at pg. 144). Then again at the December 6, 2022, hearing on her fourth motion to hold Dirk in contempt which resulted in the Order which is on appeal here, Miki testified that Dirk had made no contact nor attempted contact with her. (12/6/2022 Hearing Transcript at pg.18). And yet here we are.

The District Court Order Misstates the Facts and Ignores
Federal Statutory and Common Law and Prior District Court
Orders with Regard to the I-Mac Apple Computer and the Digital
Files on It

There are only two computers—a 2007 I-Mac and a 2011 I-Mac. There are not three computers, as the District Court order finds. The District Court order awards both computers to Miki even though that violates other provisions of the order. The order

The District Court order also declares that it is “implicant” that the one sentence ordering the “I-Mac in the kitchen” be given to Miki includes all software and licenses associated with that software and digital files. So this contempt order depends upon Dirk understanding that implication, even though there is no legal or factual basis for that implication, the purported implication violates another provision of an order issued by the District Court (the Hon. Judge Oldenburg) which awards Dirk all the personal property including digital files owned by Dirk; and the implication violates the contracts covering the licensing of applications software, the common law on the ownership of digital photographs, the Federal Copyright Act of 1976, 17 U.S. Code 1-12 (2022), and of course the legal foundation for

all the technology coming out of Silicon Valley in the last fifty years.

The Court's Contempt Ruling and POP Issuance Based Upon Dirk's Lawful Litigation Activities in Other Cases Are Barred by Issue Preclusion.

The Supreme Court explained issue preclusion as follows:

"Issue preclusion applies with equal force to both issues of law and issues of fact. In cases involving the same issues of law, issue preclusion is appropriate when the factual differences between the two actions "are of no legal significance whatever in resolving the issue presented in both cases." *United States v. Stauffer Chem. Co.*, 464 U.S. 165, 174, 104 S.Ct. 575, 579, 78 L.Ed.2d 388 (1984). *Accord Pacific Power & Light Co. v. Mont. Dep't of Revenue*, 246 Mont. 398, 404, 804 P.2d 397, 401 (1991). The United States Supreme Court's decision in *Stauffer* and this Court's decision in *Pacific Power* provide clear illustrations of the category of cases, in which the present case falls, where the party opposing the preclusive effect of collateral estoppel sought to relitigate legal issues in which the different facts of the underlying litigation and the former litigation were not legally significant in determining the issue presented." *Montana Env't Info. Ctr. v. Montana Dep't of Env't Quality*, 2016 MT 9, ¶ 24, 382 Mont. 102, 112, 365 P.3d 454, 462; See also, *In re B.K.*, 2020 MT 123N, ¶ 6, 400 Mont. 559, 462 P.3d 670

The Sixth District Court (Hon. J. Oldenburg presiding) previously had denied Miki's contempt application three times; her third application alleging basically the same facts as this her fourth application.

Miki believes the no-contact order means that she cannot be subject to non-party discovery in unrelated litigation, even when she is listed as a witness by a party who is not Dirk. Dirk subpoenaed Miki¹ as a non-party witness in a Federal District Court of Montana (Billings) case (*Adams v. Johnson*, Case No. CV-20-135-SPW). The defendants listed Miki as a witness both in their pre-trial statement and in their answers to interrogatories.²

Miki defied Dirk's subpoena. Previously, in the dissolution case, Dirk had offered to drop his deposition request of her in the Montana Federal District Court case if she would agree to not testify for the defense voluntarily.³ (dkt. #351) She ignored the offer.

Miki moved the District Court on February 2, 2022, for an order of contempt against Dirk for seeking her deposition and for subpoenaing her Wells Fargo Bank checking account records. (Dkt. #340).⁴ On February 22, 2022, this Court denied her motion to hold Dirk in contempt (dkt.#353). This Court's decision then in February 2022 is *res judicata* on the issue of whether a Montana Federal District Court order compelling Miki's non-party

¹ And Wells Fargo Bank

² Dirk did not list Miki as a witness in the Federal District Court action.

³ Dirk specifically did not ask Miki to resist a subpoena for her testimony.

⁴ Indeed at the time of Miki's application for a contempt finding to Judge Oldenburg, she told the District Court that Wells Fargo was going to honor the subpoena.

deposition or a subpoena is a violation of this no-contact order. The Hon. Judge Oldenburg's order on precisely the same facts was characterized as the Judge Oldenburg Court declining to issue a permanent order of protection reasoning that such was not necessary in light of the other safeguards imposed.

This fourth request for a contempt order alleges that Dirk inquired as to her location at the time she was giving her deposition.⁵ That was a legitimate inquiry because the background noise on Miki's end of the call during the deposition made it apparent she was someplace where many people and children were milling about and talking. That was the only question about her location and it was narrowly focused. Further, both her lawyers objected and she did not answer the question in any event.

Dirk then asked Miki to confirm that she was about 2,500 miles from him, following the *Boushie*⁶ standard, and she did.

Miki also moved the Montana Federal District Court to protect her from giving a deposition on the grounds of the State District Court no-contact order, but the Federal District Court compelled her to sit for a deposition.⁷

⁵ The District Court asserted in the order that Dirk had asked for her home address. That is not true as a review of the deposition record reveals.

⁶ *Boushie v. Windsor*, 2014 MT 153, ¶ 8,375 Mont. 301, 304, 328 P.3d 631, 634

⁷ Dirk requests that this Supreme Court, unlike the District Court below, give judicial notice to all the pleadings involved in Miki's motion and the Federal District Court order.

In short, two different courts, the Sixth District Court, Park County, and the Federal District Court for Montana, heard Miki's arguments that she should not be compelled to sit for a deposition nor respond to the Wells Fargo subpoena in a circumstance when she had been identified as a key witness by defendants, and both rejected her argument on the deposition.

And even more importantly neither Court (the earlier Hon. Judge Oldenburg) and the Federal District Court punished Dirk for the deposition subpoena nor the Wells Fargo subpoena.

The facts of the earlier Sixth District Court decision as well as of the Federal District Court of Montana are the same as in this fourth motion to hold Dirk in contempt.⁸ And the exact same parties are involved. The only difference between this District Court Order and the earlier decisions is that Dirk asked a question about where she was when she was giving the deposition because of background noise, her attorneys objected, and she did not answer. These last facts are insignificant and issue preclusion should apply.

⁸ Montana Senate Bill 269 (Litigation Financing Transparency and Consumer Protection Act MCA 31-4-101 et.seq.(2024) is now law. It requires parties who file lawsuits to disclose any litigation financing agreement, limits fees to 25% of the judgment or settlement and makes financiers liable for any costs and fees assessed if they end up on the losing side.

Although Dirk raised the question of issue preclusion and the two preceding Court orders before the Hon. Judge Laird, she did not address them in her Order and during the hearing refused to judicially notice the parties' filings leading to the Federal District Court order. In fact, the Hon. Judge Laird at the January 24, 2023, hearing specifically ruled that "THE COURT: Again, Mr. Adams, what occurred at a deposition in another proceeding has no bearing on the contempt motion that this Court is hearing, so please move on." The Montana District Court barred him from entering any evidence on this issue. So even though the Court said that what happened at the deposition in another case was not relevant in the contempt hearing, the District Court proceeded to issue an order that said it was, contradicting itself, not for the first time, in this order.

Notwithstanding this ruling during the hearing, in the Order on appeal here, the Hon. Judge Laird declared that, "While much of this contact took place in discovery proceedings in other jurisdictions, the Court finds that such contact and the sensitive information sought by Dirk was neither necessary nor intended to prosecute his claims."

Other Facts Alleged by the District Court as Supporting the Contempt Order and the POP Are Either Irrelevant or Not Facts.

The District Court Order also claimed several other actions by Dirk violated the no-contact order. These were that a

photograph was taken of Miki's car in a public parking lot in 2020, before the trial, an email address which apparently appeared on the 2011 I-Mac, Dirk's alleged hiring of a third party to track Miki, and that Dirk sent emails to Miki instead of her counsel. Dirk addresses each claim below:

Miki claimed in her affidavit that there were two photographs of her car taken. Both of these car photographs were introduced as evidence in a Massachusetts Federal District Court case in which Miki is a defendant. They were used as evidence because Miki's lawyer in the Massachusetts case asserted that Dirk's claim that she might live in California was false.

Exhibit L is a photograph of Miki's car taken by a Utah Constable on October 1, 2020, (two and half years before her fourth motion to hold Dirk in contempt and not mentioned in any of her other, earlier motions to hold Dirk in contempt) in a public parking lot in front of her place of employment and was used as part of Dirk's motion pursuant to MCA 40-4-126 (2) (dkt#75) to claim that Miki had spent \$29,000 for a car without notice to him and in connection with service of process upon Miki.

Exhibit M is a photograph of Miki's car taken on April 1, 2021, at the end of the two-day trial of this matter, when Miki

drove it to and parked it at Dirk's ranch house near his front door at 729 Shields River Road, Wilsall, Montana.

At the hearings she admitted that notwithstanding her affidavit filed in support of her MOTSC, in fact, she had not looked at the photographs carefully until asked to do so on cross-examination. She conceded that the first photo was of her car in a public parking lot in front her office and that although she testified that she did not recognize where the car was located, in fact, she did know where the photograph was taken at the time she testified that she did not.

(Dec12/06/2022 Hearing Transcript at pg. 41, 54) The second photograph was of her car parked at Dirk's ranch house on April 1, 2021, when she joined her counsel in walking up on to the ranch front porch. She dropped her objection to that second photograph.

The "email address," which purportedly appears on the 2011 computer shipped to Miki and which allegedly proves Dirk intended to "track" Miki's activities on the 2011 I-Mac was never proven to have any connection to Dirk nor to have functionality as a "tracker." It was an allegation of ownership made by counsel for Miki. (12/06/2022 Hearing Transcript at pg. 67). Miki did not introduce any testimony of an expert to that effect or to ever test the email address herself. Nor was there

any testimony nor evidence that the email address was connected to "one of Dirk's devises" [sic] as found by the Court.

Dirk denied that it was his email or that he knew anything about it.~ Nonetheless, the District Court in the order which is on appeal found the mere appearance of a random email address without either facts or law meant Dirk was trying to track her. In any event, surely more is required to prove that an email address was a "tracker" other than the bald assertion by a lawyer.⁹ The District Court cannot conclude that it was a tracker based upon innuendo. Again Miki's proof fails.

With regard to Dirk hiring a third party to track Miki, the District Court's assertion surprises. Twice the Court ruled that Miki could not testify about such a claim because it was hearsay. -(12/6/2022, Hearing Transcript, pg. 48-49; 1/24/2-23 Hearing Transcript, pg. 25, line 15). It clearly was hearsay as the District Court found at the time. Nonetheless the District Court then included the testimony as an example of Dirk's violation of the no-contact order. There was no person tracking Miki.

Dirk did retain a Utah Constable to serve legal process on Miki. Hiring a process server hardly is a violation of the no-

⁹Dirk was denied any opportunity to examine the 2011 I-Mac after it came into Miki's possession so he was unable to determine when that email address was added to the computer.

contact order. Dirk and Miki had a colloquy during the December 30, 2020, hearing on her first motion for a POP order, during which he offered to serve papers on her legal counsel instead of her. Legal counsel interrupted to say that they would never agree to that. Dirk then pointed out that he would have to use a process server to serve a complaint. Miki stated she understood. (12/30/2020 Hearing Transcript at pg. 191).

Most of these allegations are stale dated, having occurred years before her most recent application for a contempt order which was a duplicate of her third motion for a contempt order.

Then the District Court in a bracing provision of the order, stated: "Dirk shall not take, hide, sell, damage, or dispose of any ... the personal property of her employer or the personal property of her employer's clients. These provisions far exceed the relief requested, there was no evidence taken about them, no notice of them provided to Dirk, they are impossible with which to comply because, as just one example, Dirk has no idea who Miki's employer's customers are nor who qualifies as a customer.

And again, the District Court specifically held during the December 6, 2022, hearing that no third party is covered by this contempt hearing and that Dirk was barred from introducing any evidence about any third party. (12/6/22 Hearing Transcript at pg. 86). This prohibition on non-party persons (older than 18)

or entities being eligible to receive relief in a dissolution nor as a non-party beneficiary of a protective order is consistent with Montana law.

There is No Statutory Basis for a POP Nor is the Term of the POP
Appropriate

MCA 40-15-201 provides as follows:

"Temporary order of protection. (1) A petitioner may seek a temporary order of protection from a court listed in **40-15-301**. The petitioner shall file a sworn petition that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in **40-15-102**, has a relationship to the respondent if required by **40-15-102**, and is in danger of harm if the court does not issue a temporary order of protection immediately.

The relevant MCA section provides that a POP may be issued if,

"on the basis of the respondent's history of violence, the severity of the offense at issue, and the evidence presented at the hearing, determine that to avoid further injury or harm, the petitioner needs permanent protection. The [district] court may order that the order of protection remain in effect permanently."
MCA Section 40-15-204(1)

Miki's affidavit in support of her motion for contempt lists none of the MCA 40-15-102 offenses. Almost every allegation Miki makes is about acts in litigation. There are rules and judges present to supervise litigation. And the balance of her allegations are stale-dated or about a computer delivery.

Dirk is unaware of any email he sent to Miki instead of counsel where Miki was represented by counsel and none were introduced by Miki.

The District Court's language that Dirk has filed a "staggering number" of lawsuits is directly contrary to Miki's claim that three lawsuits were all to which she objected and upon which three cases the District Court relied in issuing its vexatious litigant determination.

CONCLUSION

The District Court order, respectfully, is riven with error of fact and law. It should be corrected so the parties actually comply with it. Miki's primary brief does not address the errors nor Dirk's arguments. Her request for legal fees here is meritless.

The Supreme Court should reverse the Order in full and remand the Order to the District Court for a hearing to sort out the computer ownership issue as well as the ownership of the software and digital files consistent with the facts, prior District Court orders, and applicable federal and state law.

The Supreme Court also should reverse the District Court Order finding Dirk in contempt and subjecting him to a 10 year POP.

Finally, the Supreme Court should remand the District Court's order on confidentiality for an explanation of its rationale or reconsideration.

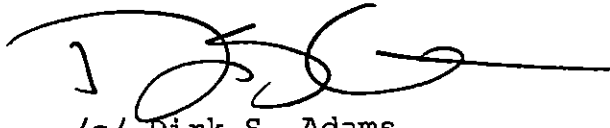
Dated: November 21, 2023

Respectfully Submitted,

/s/ Dirk S. Adams

Dirk S. Adams

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'D. S. Adams', with a long horizontal line extending to the right.

/s/ Dirk S. Adams

Dirk S. Adams

Certificate of Compliance

This brief uses a monospaced font, Courier New 12 pt. with not more than 10.5 characters per inch.

The brief does not exceed the appellate reply brief limits in words counting only those words which Rule 12 permits.

Dated: November 21, 2023

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'D. S. Adams', followed by a long horizontal flourish.

Dirk S. Adams

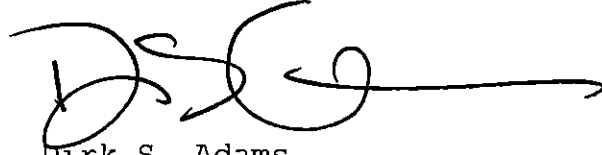
Certificate of Service

I declare under penalty of perjury that on November 22, 2023, I caused to have filed a true and accurate copy of the foregoing Appellate Reply Brief with the Clerk of the Montana Supreme Court by hand; and that I have served true and accurate copies of this Brief and accompanying papers by first class U.S. mail to each attorney of record and by email, and each party not represented by an attorney in the above-referenced District Court action, as follows:

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