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Attorney for Montana Trial Lawyers Association

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA-23-0312

T.M.B., by and through DARCY SAUNDERS,
CAPITAL CITY CASE MANAGEMENT,
Guardian and Conservator,

Plaintiff/Appellant,

v.

WEST MONT and STATE OF MONTANA,

Defendants/Appellees.

**MOTION TO FILE AMICUS
BRIEF**

1. MTLA's Interest.

MTLA is a member organization of approximately 500 Montana attorneys who represent litigants to secure a just result for the injured, the accused, and those whose rights are jeopardized. Its members represent claimants injured in negligence actions, premises liability claims, governmental liability claims, products liability actions, insurance matters and employment issues including wrongful discharge

suits. MTLA periodically appears in the Montana Supreme Court as *amicus* in cases involving these issues.

MTLA is interested in this matter because T.M.B. is amongst the most vulnerable class of citizens in this state. The importance to MTLA of ensuring the safety of citizens within that most vulnerable class, by creating accountability through the concept of vicarious liability and a non-delegable duty, cannot be overstated.

2. Issues Upon Which MTLA Wishes to Submit an *Amicus* Brief.

MTLA seeks to submit an *amicus* brief regarding the applicability of the doctrine of non-delegable duty in the case at bar as well as the appropriate application of the doctrine of *respondeat superior*, including the issue of whether the doctrine must be plead in order to apply. *See Saucier ex rel. Mallory v. McDonald's Restaurants of Mont., Inc.*, 2008 MT 63, ¶ 64, 342 Mont. 29, 48, 179 P.3d 481, 495 (*Respondeat superior* is not a free-standing or independent tort cause of action; rather, it is a doctrine of the law of agency by which the consequences of one person's actions may be attributed to another person.”); *Brenden v. City of Billings*, 2020 MT 72, ¶¶ 29-30, 399 Mont. 352, 369, 470 P.3d 168, 178–79 (“Brenden did not have to separately plead his apparent authority theory of respondeat superior as a distinct liability claim.”)

3. An *Amicus* Brief is Desirable.

This case raises important issues regarding the parameters of the doctrines of *respondeat superior* and non-delegable duty. The decision in this case is likely to have broad implications to Montana law.

4. Identity of the Party Whose Position MTLA Supports.

MTLA supports the position of Plaintiff-Appellant.

5. The Parties' Position Regarding MTLA's Participation as *Amicus*.

The parties have been contacted regarding MTLA's participation as *amicus*. There is no objection to MTLA's participation from the Plaintiff-Appellant. The Defendants-Appellees have not responded.

6. The Date MTLA's *Amicus* Brief Can Be Filed.

Amicus counsel is prepared to file the brief by the date set by this Court for the Plaintiff-Appellant to file her opening brief.

WHEREFORE, based on the foregoing, MTLA respectfully requests leave from the Court to participate in this matter as *amicus curiae*. A proposed order to allow MTLA's participation is submitted herewith.

RESPECTFULLY SUBMITTED this 1st day of February 2024.

MONTANA TRIAL LAWYERS ASSOCIATION

By: /s/ Justin P. Stalpes

JUSTIN STALPES, ESQ.
Attorneys for Amicus MTLA

CERTIFICATE OF SERVICE

I, Justin P. Stalpes, hereby certify that I have served true and accurate copies of the foregoing Motion - Amicus to the following on 02-01-2024:

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Electronically signed by Kaitlin Pomeroy on behalf of Justin P. Stalpes
Dated: 02-01-2024