



ORIGINAL

FILED

03/28/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 24-0136

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 24-0136

Form 11(6)(b)

AUSTIN LAKE,

Appellant,

v.

OPENING BRIEF

Montana Dept. Labor & Industry

UIAB, & Town Pump, Inc.

Appellee

FILED

MAR 28 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

On appeal from the Montana Twentieth Judicial District Court

County of Sanders, Case No. 2023-77 Honorable D. Kim Christopher presiding,

Appearances:

Austin Lake

76 Glenwood Dr. #314

Kalispell, MT. 59901

406-955-6017

Appellant

Aleea Sharp/Agency Counsel DLI

P.O Box 1728

Helena, MT. 59624

Emma Peckinpaugh/Attorney

Town Pump, Inc.

P.O Box 6000

Butte, MT. 59702

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Cases

Legal Authority

DLI vs. Danylle King p. dli-0017dv2019-951

The Constitution of the United States

Article III Part II

STATUTES:

3-5-302	39-51-701
3-5-303	39-51-703
3-5-311	39-51-706
3-5-312	39-51-1219
24-11-204(8)	39-51-2302
24-11-441(4)(a)	39-51-2303
27-26-102	39-51-2402(3)
39-1-102	39-51-2403
39-2-904(1)(a)	39-51-3206
39-2-905(3)	Title 25
39-3-216(1)	Title 49
39-51-201(19)	49-3-209

Statement of Issues:

1. Did the Montana Department of Labor and Industry Agency Counsel Aleea Sharp create confusion in an attempt to cause technicalities within the filing mandates of Sanders County District Court?
2. Did Respondent Aleea Sharp then capitalize on this confusion once it was established within the District Court that later led to the filing a “motion to dismiss”?
3. Did Sanders County District Court Cynthia Neste misfile or make an error during filings that were submitted by the Petitioner due to this confusion?
4. Were the facts and legal arguments presented to the Montana Department of Labor & Industry Unemployment Insurance Appeals Board ignored prior to the filing of the “petition for judicial review” with District Court?
5. Had the issue already been corrected and determined to be overturned by the Adjudication Unit of the Montana Unemployment Insurance Division prior to the filing of the “petition for judicial review”?
6. Should this case have been overturned prior to the “petition for judicial review” therefore eliminating the need for an appeal in District Court?
7. Was the Sanders County District Court in error when they made their decision to “dismiss” for the cause of an “untimely” filing of petition for review & failure to timely serve Respondents?

STATEMENT OF ISSUES:

8. Was & is the Montana Department of Labor & Industry aware of the settlement agreement made between the Petitioner and the former employer Town Pump, Inc. regarding harassment, discrimination, retaliation, blacklisting and violations of #4 of DV 2023-77?

9. During the process of Petitioners filings did Sanders County Clerk of District Court overlook or error crucial facts including exhibits #235 & #240 for which petitioner provided for review?

10. Did Sanders County District Court also ignore or overlook multiple motions, complaints, briefs and orders filed by the Petitioner including opposition to Respondents "motion to dismiss?"

11. And did Sanders County District Court make an error or overlook their obligation of enforcing the deadline Respondents had to respond to these motions and filings in a timely manner?

STATEMENT OF CASE:

The issues of this case is whether claimant is qualified to receive unemployment benefits based upon the separation from employment as provided in Mont. Code Ann 39-51-2302(leaving work without good cause) & 39-51-2303(discharge for misconduct).

Statement of the Facts:

On 6/26/2023 I filed an appeal with the Montana Department of Labor & Industry Unemployment Insurance Appeals Board to submit an argument regarding the status of “ineligible” to receive unemployment benefits. On 6/28/2023, status or notice regarding “separation from employment” was mailed out (exhibit #240) which stated that claimant “is eligible to receive benefits, your discharge was not for misconduct under Mont. Code Ann 39-51-201(19) & 39-51-2303.” Upon receiving this notice I presented this notice to the Appeals Board in accordance with the governing rules of the Hearing Board. On 8/2/2023 I again presented this evidence along with legal argument that this appeal should not proceed, that the decision or determination had already been overturned by the Adjudication Unit of the Montana Unemployment Insurance Division under 39-51-201(19) & 39-51-2303. The Board ignored my evidence and legal argument then proceeded with the decision of denying my eligibility.

On 9/8/2023 I filed a “petition for judicial review” with the Montana Twentieth District Court in Sanders County, in a timely manner, accompanied with the same evidence & legal argument as I provided the Hearing Board. My brief and documents were attached to the Petition which was submitted on 9/8/2023 and filed by the Clerk of District Court on 9/20/2023. (District Court record ROA listing DV-45-2023-0000077-JR, filing #2.0, code DocPET, clerk Cuc185).

Summary of Argument:

The Sanders County District Court did not make a decision based on the facts presented in this case. Respondents' strategy in this case was to create confusion & technicalities in the filing requirements and mandates of the District Court for which they succeeded. The other factors to add confusion to the District court is the fact that there were three different cases that the DLI required the Petitioner to file for an appeal for which I submitted a motion for all three cases to be combined since all three were on the same unemployment claim. That motion was neither ruled on nor did the Respondent contest the motion.

Did Sanders County District court get confused with the multiple filings required by the Department of Labor & Industry with this case? Did Clerk of District Court Cynthia Neste enter the wrong case number in the docket? And was crucial evidence overlooked or ignored?

As Petitioner in this case I have filed in compliance with all the filing requirements mandated by the District court.

The Standard of Review has been in error by the District Courts decision. The facts presented to the District court upon the initial filing of the Petition for Judicial Review was sufficient evidence for an immediate ruling and this case should have been ruled on upon receipt of those overwhelming facts.

STANDARD REVIEW:

Exhibit #240 clearly states “you stated your employment ended with Town Pump. Your employer has not submitted information regarding your separation from employment. Based on the information available, your discharge was not for misconduct under Montana Code Annotated Section 39-51-201(19) and 39-51-2303.” “Respectfully, Adjudication Unit Montana Unemployment Division.”

Case # DV 2019-951 Dept. of Labor & Industry vs. Danylle King DLI-0017 Mt Code Ann 39-3-216(1) States: “If the Department determines that a wage claim is valid and employer does not appeal, the claim must be paid.”

ARGUMENT:

Not only had the issues of this case been ruled upon & overturned, facts submitted in this case also shows beyond reasonable doubt that the employer initiated the separation (see attachments; Opening Brief DV 2023-77 case no. 92-2024) of employment. Facts presented in this argument shows substantial conclusive evidence that the employer ignored State & Federal Laws for which I was protected under FMLA guidelines. After a surgery that was medically necessary and upon the release from my physician the employer ignored policy & laws which stated I “was to return to the position and scheduled hours prior to the surgery”.

The employer violated their own policy and the FMLA regulations by drastically cutting my hours from 40 hours per week to 15-20 hours per week. I was left with no other choice but to file for partial unemployment for which I was determined eligible and began receiving partial payments. Upon learning of my claim for unemployment benefits the employer contacted the claims center and provide a false statement to put a stop to the payments which is a violation of Montana Code Ann 39-51-2405, "benefits MUST be paid promptly in accordance of most recent determination" and 39-51-2402(3) "prompt payment MUST be made regardless of further appeal, any process suspending a payment MAY NOT be issued by the Board or a Court until after the final decision."

In addition, these facts and facts presented to the Dept. Labor & Industry Appeals Board in regards to the employer also violating 39-51-2403 "providing false information" & "withholding information" 39-51-1219 "knowingly making false statements" 39-51-3204 "failure to disclose fact" and as a result of these violations the employer also "initiated reduction of hours" 24-11-441(4)(a) & 24-11-204(8) "employer was the moving party in the separation of employment."

When the DLI Unemployment Insurance Division put a stop to the payments they were also in violation of 39-51-2402(3) then they violated 39-51-3206 "unlawful collection of benefit or overpayment" as they called it.

The employer and the DLI violated Montana Laws yet I was denied for three different reasons which forced me to appeal all three as different cases in District court. I filed a motion to combine all three cases (see attachments) because they were on the same claim yet different issues.

Not only did the Montana Dept. of Labor & Ind. And Sanders County District Court overlook or error these facts but a Human Rights Bureau Investigation is currently being reviewed in regards to the employers conduct of Retaliation/Blacklisting. Those events which are relevant in this case in establishing that the "employer was the moving party in the separation of employment."

An example or explanation of certain events that occurred while working at Town Pump was an incident I reported to the employer, and I also filed a complaint with the Human Rights Bureau. Shortly after I utilized Town Pumps EAP (employee assistance program) which was supposed to be confidential, a local resident in Plains bumped into me and said "your type is not welcomed in this town." He smelled like alcohol so I didn't pay any attention to it. That occurred around 11:30pm, my shift ended at 12am. As I was driving home from Plains back to Hot Springs where I lived 8-10 pickups with bright lights followed me very close as if they were going to run me off the road. When we approached Hot

Springs hill they all passed me one at a time almost hitting me as they sped past. The next day I reported to work and upon entering the store the cashier called the store manager on the radio letting them know I was there for my shift. I overheard the manager say, "that's impossible, Austin called out" after hearing that I walked upstairs and reported the incident. The store manager told me "if it didn't happen on Town Pump property I can't do anything about it." Even after I reported that it initiated on Town Pump property by the local (Mr. Stewart) bumping into me and telling me my type wasn't welcomed. However I fulfilled my obligation and responsibility by filing a complaint, I also filed the complaint with the Human Rights Bureau: The only actions taken in regards to my complaints was a statement made by the Human Rights Bureau Investigator Shaunie Aklestad on the report saying " as small towns tend to do."

Within two weeks my assistant manager (who apparently welcomed in "their" town either) came into the Plains Town Pump store and collapsed on the floor (later saying his drink had been drugged) in front of the graveyard attendant. The attendant called for an ambulance because he said he "couldn't even recognize his co-worker because he was beaten beyond recognition," as "small towns tend" to do. This small town was beginning to get out of control!

Then within two or three days I was working my 4pm-12am shift and around 9pm

And I was feeling like someone slipped something in my coffee. I called the co-manager and told her I couldn't make it to the end of my shift, then I called my wife at the time to come and get me. She showed up close to 10pm and even though I was fading fast I told her I would follow her because I didn't want to leave my car there overnight because I knew they would tamper with it (as they eventually did anyway). As we left the Town Pump parking lot I noticed "a lot" of bright lights leaving T.P as well and they were behind us. They backed off for a few miles, and I relaxed a little. I was following my wife who had her granddaughter riding with her, she was only eleven years old. Half way to Hot Springs here they come again, there was 10 or 12 pickups this time, they first kept a straight line and the first truck was almost touching my back bumper. I had a hard time seeing the road because of the bright lights. After we approached Hot Springs hill again they all began to pass me just like before almost running me off the road, then one by one they did the same thing to my wife and her granddaughter. They were scared for their lives. My wife's granddaughter for whom she had custody of at the time has been in counseling ever since. The escort out of town eventually worked, my wife finally had enough, filed for a divorce and moved back to Kalispell. "as small towns tend to do" Shaunie says.

This kind of mistreatment is unacceptable! But this was just the start of the

continued harassment at work and also away from work.

Other complaints for which I filed with the Human Rights Bureau relevant to this case is the employer (Town Pump, Inc.) attempted to terminate my employment by fabricating over 13 counseling reports, 33 days of suspension, 302 lost hours plus over 200 hours lost income due to being harassed & sent home (see attachments, legal argument, p.3; District Court 92-2024, opening brief). Being forced to step down as Assistant Manager then being forced to resign. I didn't sign any of the CR's and I filed over 6 grievances with the Human Resource Dept. for losing over \$10,000 up to that point. (I am not charging Town Pump against any complaints, I am simply providing facts in this case for the relevance of this case for I have honored a binding agreement with the employer) And for losing my job. My record was spotless for three years up to that point (see attachments Doc. 1) then all of a sudden 33 plus violations in four months.

The Montana Human Rights Bureau, EEOC, the Dept. of Labor & Industry UIAB ignored these facts for which I filed a complaint and motions with the Sanders County District Court for which they were in error and or overlooked my motion and order for a ruling in "refusal for the right for an appeal" due to the Appeal Boards ignoring "finding of fact."

Montana Dept. of Labor & Industry not only overlooked or ignored these facts,

They have also violated 39-51-701 Unemployment Integrity Act 39-51-703, 39-51-706 Integrity Issues.

CONCLUSION:

For the last two years I have not been able to work due to being blacklisted, harassed and due to dedicating myself to demanding requirements and deadlines in filings, I have done so because I have been wronged. The reduction of hours, the violation of Montana Laws by the employer & the violation of MT. Laws by the DLI in stopping payments through the unlawful collection of payments put me in a position of losing my home to a short sale with a loss of over \$80,000 in market value and another \$60,000 invested in upgrades & improvements not to mention the hours involved in the remodeling. Well over \$140,000 lost plus another \$40,000 in labor.

As for being harassed by the employer and sent home with no income then constantly harassed by the City of Plains, enduring the financial setbacks was too substantial to overcome but the emotional distress was too much, for me, my wife & her granddaughter was also too much for them to bare.

The time this case has taken away from my life can never be returned, I've spent thousands of hours researching laws then applying it towards legal argument for I

Could not find an attorney in the State or nation to take on an unemployment case.

I spent all this time and research only to have it repeatedly “thrown out” due to a technicality that the opposing party created. I have been in compliance with every filing and court mandates or requirements.

This is why I am asking this Supreme Court to use its powers to make a ruling 39-1-102 Duties of Dept. Title 49(2)(3) “Prohibiting discrimination” (2) “may not use undue influence” (a) “follow all rules & regulations” (b) “inform all persons of their rights, even file a complaint within the department.” The Montana Human Rights Bureau failed me in their responsibilities & obligations.

The Constitution of the State of Montana Part 11 Declaration of Rights.

Individual Dignity Section 4 “neither the State shall discriminate against any person on the account of race, sex, culture,” or protected status or family medical history. Title 25 Civil Procedures Retaliation Prohibited Title 49 Human Rights 49-3-209 “unlawful discriminatory practice for a State or local government agency to discriminate an individual for filing a complaint.” MT. Human Rights Bureau has also filed me on this. 49-3-205 “Government Services must be performed without discrimination” 3) “remedy any defect found to exist.”

CONCLUSION:

The Constitution of the United States Article 111 Section 2 states “the Judicial

Power shall extend to all cases, in Law & Equity arising under this Constitution, the Laws of the United States” to all cases, “citizens or subjects”. In parallel to this Article 111 Section 1 says, “The Judges both of the Supreme and inferior Courts, shall hold their offices during good behavior” Amendment V11.

Complaints have been filed to the EEOC, three to the Human Rights Bureau, three due to the violations of MT. Laws by the DLI and it all originated from the initial charges against the employer for which as I have mentioned I have honored the binding agreement with, however the other parties mentioned or listed above have violated multiple laws including violating my constitutional rights for which I’ve also listed. There is a lot of fear in our country right now, people don’t trust our government & until our government accepts accountability just the same as we are expected to and are enforced to, this fear is only going to get worse. For over six months I have been homeless due to these violations of laws and my rights, I was outside with no options when it reached forty below zero temperatures, I was then in a homeless shelter with four people who later were discovered as being immigrants, they could not speak English. One individual by the name of Johnathan had a light jacket on and we spent all day out in the cold, he couldn’t speak English but his phone had a translation app so I could understand what he was saying. He said, “ I’m cold and that he was sad, he wanted to find a job.” So I found him some warmer cloths, took him around Kalispell, showed him all the

Resources available, also showed him street sign so that he could find his way back to the shelter when we were allowed back in for the night. I brought him to the local Job Service so he could apply for work but he was hesitant and did not want to go in because he was not legal to work in the US. One morning after I only slept about two hours because I was preparing for a required filing with District Court, which I managed to do so even while homeless; When I woke up I noticed Johnathan was sitting on the edge of his bed staring at me, he had a scared, sad look on his face. I recognized his frustration & fears so I pointed at his phone and he handed it to me so I could translate what I wanted to tell him. I said, "Johnathan, this is my country & I have to admit, I'm just as confused as you are but regardless of what is going on or what happens in the future you must always remember that you will get through this, you must always remember and hold on to the core values that you were brought up with and taught as a child and those same values you taught your kids, knowing right from wrong, doing the "right thing", making good choices and we must have faith in our "trusted leaders" & to "trust the process." When I looked up I noticed he had a tear in his eye but he had a look of hope that wasn't there just moments before. Even though we were from different countries he understood. The next day Jonathan informed me that they were going to send him to Oregon by train. He called me "daddy" and gave me a big hug.

This is how I was raised. I've made my share of mistakes but these core values instilled in me and the love for my family and my country are still the same. This is why I have fought so hard to protect my Constitutional Rights.

FINAL NOTES:

To conclude legal argument in accordance & in compliance with the outlined instructions of the Montana Supreme Court, that the Appellant is to tell the court what I am asking it to do. I am asking this court to uphold the Constitution of Montana and the United States of America. 3-5-311 Powers of Judges(1)(a) grant all orders (d) make default judgement 3-5-312 Jurisdiction of Judges co-examine with the State "the Supreme Court has jurisdiction & authority over all lower courts and has ultimate powers for a ruling that is just." A ruling based on facts of a case and not based on technicalities. A ruling to protect the Constitutional Rights 3-5-302 (b) all civil & probate matters (c) all cases of law & equity 3-5-303 "Appellate jurisdiction in their respective districts as may be prescribed by law & consistent with the constitution." 27-26-102(1) "may be used by the Supreme Court or District court Judge to any lower tribunal board or person to complete the performance of an act that the laws specifically enjoins as a duty results from an office" 27-26-102(2) the court must be issued in all cases in which time is not a plain, speedy and adequate remedy in the course of law" Amendment XIV Section 1 "no State shall deprive any person of life, liberty, or property without due

Process of law nor to any person the equal protection of the laws.”

Several complaints filed with the Human Rights Bureau including the “city of Plains” under “reasons to fear for one’s safety & well being” and having to endure harassment, unlawful video surveillance, then the state wants to illegally monitor me with the assistance of drones (Town Pump District Manager said to me “it’s illegal to shoot at a drone,” even if I had shot at a drone, not saying I did, how would she know that?) If I decide to shoot at a drone that is illegally monitoring me and harassing me, my wife and her granddaughter, I will protect my privacy, it’s my constitutional right. If the City of Plains or the State wants to attempt to entrap me just like my former employer attempted to slander & discredit me, to violate my constitutional rights & take away my property and liberty to enjoy life, I will first put on a show for you to express the same mutual disrespect then I will dig deep and reach for those core values instilled in me and expose the dishonest unconstitutional actions by my “trusted leaders” who are supposed to protect my rights and for whom I’ve always put my faith in.

For the unlawful, illegal & unconstitutional actions of threatening my wife (at the time) I ask for punitive damages in the sum of one million dollars, paid either by the City of Plains or the Montana Human Rights Bureau for which the complaint was filed. As for her granddaughter who was also threatened by citizens of the City of Plains and continues to seek counseling as a result I ask for punitive

damages also in the sum of one million dollars, paid either by the City of Plains or by the Montana Human Rights Bureau for which the complaint was originally filed and was told "as small towns tend to do."

I ask these damages under authority of Montana Laws 39-51-904 emotional distress 39-51-905 right to seek punitive damages 39-51-701 unemployment Integrity Issues 39-51-703 & 39-51-706 Integrity Issues within the Department.

For these violations against myself I ask for punitive damages I the sum of one million dollars paid by the City of Plains and one million dollars paid by the Montana Human Rights Bureau for whom I filed the complaint in regards to my safety and wellbeing and was simply told, "as small towns tend to do."

As for the violations by the Department of Labor & Industry for refusing my "right for an appeal" denial of benefits I was already determined eligible for, the emotional stress for the last two years for ignoring facts and evidence; I seek damages of the sum of two million dollars..39-2-905(3) Punitive-DLI violating 39-2-904(1)(a). And violation of 39-51-2405(1-3) repeated "unlawful" collection of overpayments (as they also violated in 2015 that forced me to send my son back to his mother because the DLI unlawfully took the funds from my account that was in place for my rent, putting me homeless) (I will let them have that one due to the statute of limitations).

As for Article III Section 1. continued for pf Retaliation from the State of Montana

I seek the sum of two million dollars for violating my Constitutional Rights Article

III Section 2. Title 25 Civil Procedures "Retaliation Prohibited" 49-3-209

"unlawful discriminatory practice for a State or local Government Agency" or

agencies, to discriminate an individual because an individual has filed a

complaint." The Constitution of the State of Montana Part II "Declaration of

Rights," Individual Dignity. Section 4 "neither the State shall discriminate against

any person on the account of race, sex, culture" or protected status or family

medical history.

The amount owed to the Appellant from the original determination of eligibility by the Unemployment Insurance Division is the sum of eighty five hundred dollars paid by the UI Division.

And due to the ongoing emotional & financial distress of these violations I ask for the sum of one hundred thousand dollars per day being forced to live in unsuitable & inhumane conditions until the final judgement in this case, starting from the day this appeal was filed with the Montana Supreme Court. March 18th, 2024.

Respectfully submitted this 27th Day of March, 2024

AUSTIN LAKE

