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04/29/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 23-0699

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0699

David E Orr,

APPELLANT,

v.

Tiffany House,

FILED

APR 29 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPELLEE.

**APPELLANT REPLY BRIEF TO APPELLEE RESPONSE TO
APPELLANT'S OPENING BRIEF**

From the Montana Thirteenth Judicial District Court Lincoln County
Cause No. DV-22-18 Before Hon. Matthew J. Cuffe Under Appeal
In The Supreme Court of The State of Montana Case No. DA 23-0699

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Comes now Appellant David E. Orr as Pro Se and hereby submits Appellant's Reply Brief to Appellee's Response Brief filed March 29, 2024 to Appellant David E. Orr's Opening Brief filed January 29, 2024.

I STATEMENT OF THE ISSUES

Appellant disagrees with Appellee's statement regarding the District Court was denied an opportunity to consider Appellant's issues. Appellant also disagrees and objects to the initial filing of this lawsuit due to the negligence of Appellee's council and the District Court to properly interpret the reservation (proviso) in any Grant and the legalities of the two Quit Claim deeds associated with Mr. Orr's Property Title ownership according to the laws of the State of Montana. This has caused the entire proceeding to be a "miscarriage of justice," compromising the "integrity of the judicial system." Thereby constituting "Prejudicial Error" and a violation of David E. Orr's Constitutional Rights. "If it please the Court,' Orr would like to move on to the arguments in order to not be repetitive and believes the Court is well aware of the Statement of the Case.

II. ARGUMENT

A. Appellee claims that Appellant introduces issues for the first time which is not procedurally proper. Appellee states it is unfair to fault the trial court for failing to rule correctly on an issue it was never given an opportunity to consider. This is a direct contradiction as it was Orr who was never given the opportunity to address the Court, before the Judge made a hasty and erroneous decision granting the Summary Judgement and the Order directing Orr to sign the property over to Appellee on August 18, 2023. This was the original date scheduled a year prior for the pretrial. Its quite obvious no one was interested in any issues that day. Then Orr went to the rescheduled pretrial on August 22, 2023. The Distict Court Judge said "I no longer have jurisdiction over this matter" and the Court vacated all future hearing dates. Dist.Ct.Dkt. 21. No one was interested in any issues that day either, or the two folders of papers Orr brought with him. The Doors of Justice at the District Court were closed to Mr. Orr as of August 22, 2023.

ARGUMENT (CONTINUED)

Mr. Orr always believed that something as serious as depriving a Citizen of their private property, a parcel of land, would be done in a Courtroom. Perhaps he watched too many episodes of Perry Mason when he was young. He was anxiously awaiting his day in Court to exercise and defend his Rights of Life, Liberty, and Property, his Right to Due Process of Law, and his Right of Self-Incrimination all guaranteed to him by the V, VII, and XIV Amendments of the Constitution of the United States of America and Article II Sections 17, 34, and 26 of the Montana State Constitution. These are certainly not new issues or legal theories as those are the words that have been used and directed at Mr. Orr, by House and her council. These are our God given Rights and they are just a part of the very Foundation and Fundamentals that this great Country was founded upon and to this day it still says, [This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.] Article VI

B. Appellants Arguments are Substantively Deficient and thus the Plain Error Doctrine is Inapplicale.

The District Court had every opportunity in the world to hear Orr's testimony and see his evidence. Especially since its been right there in front of them, the Court, House, and her council Mr.Christian. Here Appellee claims to have comprehensive evidence and legal precedent that firmly supports Appellees position and they believe they are entitled to prevail on the merits.The Court should choose to consider the substance of Orr's arguments because they actually have substance. Orr will prevail on the merits which are, a "preponderance of the evidence" "clear and convincing" and "beyond a reasonable doubt."

1. An Email Noting an Objection to a Motion is not a Substantive Response to a Motion

ANSWER

(3) Time to Respond; Effect of Not Responding. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney, Mont.R. Civ. 36P.(a)(3). It doesn't mention the word Court. Appellant's email should suffice as an answer that was served on the requesting party. Appellee says based on these deemed admissions the Appellee moved for summary judgement noting Appellants objection. Doc.11. because Appellant didn't respond on time, which would have been June 20, 2023. Appellant responded on May 26, 2023. *See email* Response and objection to Motion. [Exhibit G]

APPELLEE ARGUMENT VI

2. 3.

2. FIFTH AMENDMENT IN A CIVIL MATTER

3. RIGHT TO TRIAL BY JURY

House is again attempting to distort the facts by mentioning only half of the subject matter. House is talking about asserting the fifth amendment in a civil matter. Orr received a phone call from Mr. Christian prior to his filing the motion for summary judgement. Orr had already answered him in the email this court has. Christian said he was probably going to file the motion. Orr told him that since he was accusing Orr of Fraud he would be protected under the V amendment of the Constitution because Christian had brought the criminal element of into the case. He didn't really want to discuss the matter and that was the end of our phone conversation. Orr realizes that it was on a phone call and not on an official paper of some sort. Orr didn't think about that because he had planned to mention it when he went into court. It is well known at this point of these proceedings that Orr was denied his day in court. Thereby, in the Constitution of the United States of America, the *V Amendment* clearly states, nor shall any person be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or **property**, without due process of law. The *VII Amendment* clearly states, In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. The *XIV Amendment* clearly states, nor shall any State deprive any person of life, liberty, or **property**, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. The Montana State Constitution under *Article II Sections, 17* it clearly states, No person shall be deprived of life, liberty, or **property** without due process of law. *Section 26*, it clearly states, The right of trial by jury is secured to all and shall remain inviolate. *Section 34* it clearly states, The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Orr would like to remind House and Mr. Christian that *Article VI* of the United States Constitution clearly states, This Constitution shall be the supreme Law of the Land.

4. The District Court's Denial of the Appellants Motion to Stay was not in Error

ANSWER

Appellant has already commented on obtaining the supersedeas bond in his opening brief, but he has something to add to it. Appellee states Orr didn't fulfill his obligation and Orr failed to provide a waiver. This is simply not true and that is not what happened. Orr explains it on the bottom of page 2 in his Response Motion to Dismiss. Orr asked at the Clerk of Court three times what he needed to do in order to secure the bond. Orr had his Pro Se instruction packet from this Court and he was following the instructions. First he was told that Deb Kambel the Court Reporter handled that and she wouldn't be back until the following Tuesday. Orr went back on that Tuesday to get an answer and how much money he had to put up for the bond. They said Orr didn't need to do anything and was told they didn't need any money for anything. During Orr's first appeal which was done too early, he doesn't believe the District Court sent anything to this Court. Between then and now, Deb Kambel is no longer working there. The new Court Reporter/Administrator in Libby is Cindy Miller. She sent this Court the transcripts and everything she had when she first got Orr's Transcript request papers. When Orr filed this current appeal, he sent her an email and asked about a supersedeas bond. She replied with an email stating she didn't know anything about bonds, and she doubted the former Court Reporter Deb Kambel did either. She said it was because that's not what a Court Reporter does. That's not part of their job. [Exhibit C]. There is something very wrong going on in Libby Montana. It's no secret to a lot of people that there is a bias towards Pro Se Litigants. One can read plenty about it online. Orr has no problem telling anyone that this was the last thing he wanted to do at 66 years old with physical disabilities. Orr tried to get council and actually hired a firm out of Bozeman. *See Exhibit C Response to motion to dismiss*. Orr talked to a few other lawyers and they said, Twenty Thousand dollars to start. All Orr asked for was to stay the transfer of property that he holds a **Fee simple Absolute Title** on until he could have his day in Court. His Constitutional Right. This has been very wrong from the beginning. To take a piece of land away from a Montana citizen without stepping one foot in a Courtroom. Someone whose Grandparents were early homesteaders and his family has been here for 114 years is an Outrage.

5. Property Owners are Not Considered Joint Tenants if Only One Grantee Exists on the Deed.

ANSWER

House is wrong about the description of the Quitclaim Deed. [See Appellant's Ex. A.] WBG continues to try and distort the facts about what the correct pronounciation actually is. Apparently, he doesn't understand the different types of deeds and their legalities. He has referred to it as just, Joint tenancy. He has constantly tried to hide its real meaning and in fact has been more than reluctant to include it in any of his papers, or Exhibits.

Please allow Orr to clarify this so House will not have any more confusion on her issues. There are four main types of joint ownership. Community property, tenancy in common, tenancy by the entirety and Joint Tenancy with right of Survivorship. The latter being Orr's legal Title to the property that is in dispute in this current lawsuit. Montana does not recognize tenancy by the entirety. However, it most definitely recognizes Joint Tenancy with right of survivorship. This is the actual Title that belongs to Warland Ridge Ventures, Orr's single member LLC, as of July 21, 2004. Orr created a Joint Tenancy with right of survivorship with Coggeshall, on May 21,2009. The Court has this Quitclaim Deed, but Orr will attach another one labeled the same as Exhibit A. Now, in order to clarify it, Orr will dissect the reservation that is in the lower area of the Deed directly above David E. Orr's signature, of this Quitclaim Deed that is still Orr's legal Title.

5. Property Owners are Not Considered Joint Tenants if Only One Grantee Exists on the Deed

ANSWER

In the last sentence of this section Appellee says, Appellant is incorrect regarding his assertions regarding the ownership of the property, and no plain error arises if the Court refuses to hear this argument for the first time on appeal. Orr is somewhat confused on this logic but it sounds like if the Court **does** hear this argument for the first time a plain error may arise. If the Court were to refuse to hear this argument it would not only be a "Plain Error," and a "Manifest miscarriage of Justice" but it would also be an overwhelming "Prejudicial Error." Because of the reckless disregard of a fair hearing for Orr and the blatant absence to apply the Law, it is an extraordinary breach and violation of Mr. Orr's Constitutional Rights. The Laws of Montana could not be any clearer pertaining to a Property Title and they are as follows;

House claims the joint tenancy label on the 2009 deed itself does not create such form of ownership. That is correct however the reservation in a grant does. This is explained as Interpretation Against Grantor---Exception; a grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party is to be interpreted in favor of the **Grantor**. Mont. Code Ann. 70-1-516. As previously stated Orr will now dissect the reservation in the 2009 Title, which is still by Law Orr's Ownership Title. It reads TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, as joint tenants with right of survivorship (and not as tenants in common) and to the heirs and assigns of the survivor of said named joint tenants forever. And the said Grantor does hereby covenant to and **with** the said Grantee, that **he**, the owner (Grantor) in **fee simple** of said premises; that **they** are free from all incumbrances and **he** will warrant and defend the same from all lawful claims whatsoever. Orr will break it down a little more. 1. The first part has basically been cast out and doesn't have much meaning today. 2. After the said (Grantee), is the phrase that completely changes it from Joint Tenancy. {*as joint tenants with right of survivorship*} (*and not as tenants in common*). This is what distinguishes it from all other joint tenancy's. WBG has made it a point throughout this entire lawsuit from the beginning, to not mention or acknowledged this critical part of the Deed.

If it were a married couple and they divorced it would turn into a (joint tenancy in common.) and have much less protection. He has used the other Deed from Coggeshall to Orr in his proceedings and as previously mentioned in Orr's brief on Page 6, it is unknown if the Judge in Arizona ever saw it. However, an experienced Lawyer that files a lawsuit and steals a Mans Property from him with trickery and fancy words should very well know. 3. This part says to the heirs and assigns of the survivor of said named joint tenants forever. 4. And the said Grantor (**Orr**) does hereby covenant to and **with** the Grantee, that **he**, the **owner (Orr)** in **fee simple of said premises**; that **they (Coggeshall)** are free from all incumbrances and **he (Orr)** will warrant and defend the same from all lawful claims whatsoever. It doesn't mention claims in Frivolous and Meritless lawsuits. Now we come to the most important part. Fee Simple. That is the type of Ownership that Mr. Orr has in this disputed Property Title. The laws in the State of Montana refer to this as Fee Simple Absolute. Mont. 70-15-203. This is the greatest and highest property ownership estate recognized by the United States. One must be careful when looking at these two words. Convey, or Covenant or Conveyance. The act of transfer in Montana is known as Conveyance. What determines the difference is the reservation that is in the main body of the Deed. If you look closely you can see that Orr covenant to and with the Grantee. Blacks in Westlaw defines covenant as; An agreement, convention, or promise of two or more parties, by deed in writing, signed, sealed, and delivered, by which either of the party's pledge himself to the other that something is either done or shall be done. Personal Covenants bind the covenantor only, as in a covenant by the grantor of a deed that he is fully seized.

A Quitclaim Deed releases a person's interest in a property without stating the nature of the person's interest or rights, and with no Warranties of that person's interest or rights in the property. The words that are used to demonstrate the Grantors intent to pass Title to the Grantee, are Grant, Convey, Assign, Transfer, Gift, Remit, and Release. None of those appear on Mr. Orr's legal Fee Simple Absolute Title. How someone might have written it down in a Clerk and Recorders office does not take precedence over the Title with a reservation. Mont. 70-5-514

6. Appellant is very aware of Article IV of the Constitution.

III. CONCLUSION

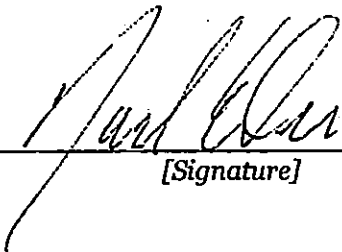
Appellant received no communication from the District Court except for the Court schedule in 2022. When Orr inquired about getting the supersedeas bond he was basically lied to. Orr never received the summary judgement brief because Appellee's council didn't have enough postage on it. Orr's mail was taken out of his mailbox and brought to the post office while he was out of town for no reason. That never happened in 38 years. The admissions were written in such a way that if he were to answer yes or no, he would have been wrong and self-incriminated himself through trickery and false accusations. The conduct that has been displayed during these proceedings and directed at the Appellant has been unconscionable. No one in the United States of America should ever have their property taken without a Court hearing and been denied and had their Constitutional Rights violated in so many ways as Mr. Orr has had happen to him. Mr. Orr has a fee simple absolute Title to this property and it was ignored by opposing council and the lower Court. That particular kind of Title is the greatest and highest property ownership estate recognized in the United States. This kind of judicial misconduct is unacceptable and those responsible must be held accountable. This case was completely without merit. One can only be grateful that our Founding Fathers had the Wisdom to create the greatest document that has ever been written. In my humble opinion. Mr. Orr hopes justice will prevail and this Honorable Court will vacate this frivolous lawsuit and return this property back to its rightful owner, David E. Orr.

APRIL 29, 2024



CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points and does not exceed 5,000 words.



[Signature]



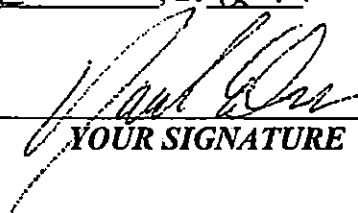
Certificate of Service

I hereby certify that true and correct copies of the foregoing Motion, any referenced Affidavit, and other documents indicated above filed as attachments to this Motion were served upon the opposing party(ies) on the 29 day of APRIL, 20 24 by the method and at the address as indicated below:

W. BRIDGER CHRISTIAN
Name
310 W. Spruce Street
Address
Missoula, MT 59802
City/State/Zip Code

- U.S. mail, first class postage prepaid
- Hand Delivery

DATED this 29 day of APRIL, 20 24.



YOUR SIGNATURE