

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 24-0620

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RODNEY OWEN SKURDAL,

Plaintiff and Appellant,

v.

JEANNE M. WALKER, YELLOWSTONE COUNTY

Defendants and Appellees.

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**ANSWER BRIEF OF APPELLEES**

**JEANNE WALKER, YELLOWSTONE COUNTY**

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On Appeal from the Montana Thirteenth Judicial District Court,  
Yellowstone County, Cause No. DV 2024-1002, Hon. Mary Jane Knisely

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## **I. STATEMENT OF THE ISSUES**

Whether the District Court erred when it determined that Walker correctly decided that Rodney Skurdal, who is not an attorney, could not represent a defendant in a criminal case?

Whether the District Court erred when it determined Walker and the County were immune from liability for Walker's decision because she made the decision in her judicial capacity?

Whether the District Court erred by not allowing Skurdal to amend his complaint?

## **II. STATEMENT OF THE CASE**

Skurdal filed a complaint in the Montana Thirteenth Judicial District Court for Yellowstone County that alleged Justice of the Peace Jeanne Walker<sup>1</sup> violated his and Ronald Trow's rights under the United States Constitution when she did not allow him to represent Trow in a criminal case. Doc. No. 1. Pursuant to 12(b)(6) of the Montana Rules of Civil Procedure, Walker and the County filed a motion to dismiss and brief in support. Doc. Nos. 6 & 7. Walker and the County argued that Walker properly barred Skurdal from representing Trow in the criminal case because he was not an attorney and that the defendants had judicial immunity as Walker actions were taken in her judicial capacity. *Id.* The District Court granted the motion

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<sup>1</sup> Mr. Skurdal refers to Judge Walker as "Jeanna Walker" in his briefing. The correct spelling is "Jeanne Walker".

on September 24, 2024. Doc. No. 13. The District Court found that Walker had made the correct decision and that Walker and the County had judicial immunity. *Id* at p. 4. Skurdal appealed the decision to the Court. Notice of Appeal.

### **III. STATEMENT OF THE FACTS**

On March 19, 2024, a Montana Highway Patrol Officer stopped a vehicle driven by Trow in Yellowstone County. Doc. No. 1, p. 10 & Exhibit B. The Officer arrested Trow for various misdemeanor traffic offenses. *Id*. On July 5, 2024, Trow appeared in Yellowstone County Justice Court before Justice of the Peace Walker with Skurdal. Doc. No. 1, p. 15 & Doc. No. 7. Exhibit 3. Trow wanted Skurdal to represent him in the criminal case. *Id*. Walker did not allow Skurdal to represent Trow because Skurdal is not an attorney. Doc. No. 1, p. 15.

### **IV. STATEMENT OF THE STANDARD OF REVIEW**

When the Court reviews an appeal of a motion to dismiss a complaint for failure to state a claim, the Court uses the same standard used by the district court. *Tally Bissell Neighbors, Inc. v. Eyrie Shotgun Ranch, LLC*, 2010 MT 63, ¶ 15, 355 Mont. 387, 391, 228 P.3d 1134, 1138. The Court treats the factual allegations in the complaint as true and determines if the factual allegations are true, does the complaint allege a recognized legal claim against the defendant. *Id*. The Court does not give any deference to the decision of the district court. The Court reviews the

decision anew. *Jones v. Mont. Univ. Sys.*, 2007 MT 82, ¶ 15, 337 Mont. 1, 7, 155 P.3d 1247, 1252.

## **V. SUMMARY OF ARGUMENT**

The District Court did not err when it granted Walker and the County's motion to dismiss Skurdal's complaint for failure to state a claim. If the factual allegations in the complaint are treated as true, the complaint fails to allege a claim against Walker or the County. Walker did not err when she refused to allow Skurdal to represent Trow in a criminal case because Skurdal was not an attorney. Even if Walker had erred when she refused to allow Skurdal to represent Trow in the criminal case, she and the County have judicial immunity because Walker acted in her judicial capacity when she made the decision. Skurdal failed to amend his complaint prior to dismissal of his complaint. There was no failure by the District Court.

## **VI. ARGUMENT**

### **i. Walker made the Correct Decision**

A person who is not an attorney does not have the right to represent another in a court. *Sparks v. Johnson*, 252 Mont. 39, 826 P.2d 928 (1992). Only a person who is an attorney has the right to represent another in a court. *Id.*

Skurdal does not allege he is a licensed attorney in the State of Montana. Doc. No. 1. Because he is not an attorney, he does not have the right to represent another in court. *Sparks, supra*. In *Sparks*, a city charged a defendant with misdemeanor

theft. The defendant pled not guilty and requested appointed counsel. The city court denied the request. The city court did not intend to incarcerate the defendant if found guilty. A friend of the defendant who was not an attorney filed a notice of appearance on behalf of the defendant. The city court did not allow the friend to represent the defendant. The friend filed a declaratory judgment action with the Montana Supreme Court as to whether he could represent the defendant in the city court. The friend argued he could represent the defendant in the city court based on Mont. Code. Ann. Sections 25-31-605 and 37-61-210 of the Montana Code Annotated. The Montana Supreme Court found Section 25-31-605 of the Montana Code Annotated only applied to civil actions in justice courts. It did not apply to criminal actions in city courts. The Court found that Section 37-61-210 of the Montana Code Annotated did not authorize a person who was not an attorney to represent someone in a city court. Instead, it exempted a person who is not an attorney who represented someone in a court of limited jurisdiction from contempt charges.

In *State v. Barnes*, 232 Mont. 405, 758 P.2d 264 (1988) the State charged a person with selling beer and wine without a valid license. The defendant demanded a non-lawyer represent her in the proceedings. The District Court did not allow a non-lawyer to represent her. The Montana Supreme Court found that Section 37-61-211, of the Montana Code Annotated allowed only licensed attorneys to practice

law and the District Court lacked the authority to allow a non-lawyer to represent the person.

A person has an inalienable right to represent themselves. *Barnes, supra*. A person does not have a right to have non-lawyers represent them in criminal proceedings. Lawyers in Montana must be licensed to practice law in the State of Montana. *Sparks, supra* The statutory exception for justice court proceedings only applies in civil proceedings. *Id.* Trow's proceeding was a criminal proceeding. Walker made the correct decision in denying Skurdal's attempted representation of Trow.

**ii. Walker and County entitled to Judicial Immunity**

A judge has immunity for judicial functions. § 2-9-112(2), MCA; *Hartsoe v. Christopher*, 2013 MT 57, 369 Mont. 223, 296 P.3d 1186. Judicial functions are the tasks normally performed by judges. *Hartsoe v. Tucker*, 2013 MT 256, ¶ 9, 371 Mont. 539, 541, 309 P.3d 39, 41. A judge is entitled to judicial immunity even when the performance of judicial function exceeds the authority of the judge. *Id.* A justice of the peace is a judge for judicial immunity. *See* § 3-1-101, MCA, *Silvestrone v. Park County*, 170 P.3d 950, 339 Mont. 299 (2007). A government entity that employs a judge is immune for the judicial functions performed by the judge. § 2-9-112(1), MCA.

When Walker determined Skurdal could not represent the driver in court, she acted in a judicial function. She made the decision as part of a criminal proceeding in the case against the driver in Justice Court. Trow was facing misdemeanor charges in the Justice Court. *State of Montana v. Ronald Allen Trow*, TK-910-2024-0001550, Doc. No. 1, p. 10 & Exhibit B. The justice court has jurisdiction of “misdemeanors punishable by a fine not exceeding \$500 or imprisonment not exceeding 6 months, or both” that occur in the County where the offense occurred. § 3-10-303(1)(a), MCA. Because she acted in her judicial function on a case within her jurisdiction, she and the county are entitled to judicial immunity. Even if she was wrong, she is immune from suit.

In *Hartsoe v. Christopher*, a person filed a complaint against a district court judge that alleged the judge had violated various constitutional rights of the person. The judge filed a motion for summary judgment. The judge argued she had judicial immunity, and the claims were barred by *res judicata* and collateral estoppel. The district court granted the motion. The person appealed the decision to the Montana Supreme Court. The Supreme Court affirmed the decision of the district court. The Supreme Court found the judge had judicial immunity.

The Supreme Court stated:

Pursuant to § 2-9-112(2), MCA, “[a] member, officer, or agent of the judiciary is immune from suit for damages arising from the lawful discharge of an official duty associated with judicial actions of the court.” Judicial immunity applies with no stated limitation, and judges

are absolutely immune from suit for civil damages for acts performed in their judicial capacities. *Hartsoe v. McNeil*, 2012 MT 221, ¶ 5, 366 Mont. 335, 286 P.3d 1211 (citing *Silvestrone v. Park Co.*, 2007 MT 261, ¶ 14, 339 Mont. 299, 170 P.3d 950; *Steele v. McGregor*, 1998 MT 85, ¶ 16, 288 Mont. 238, 956 P.2d 1364). Judicial immunity is a public policy designed to safeguard principles of independent decision making. *Hartsoe*, ¶ 5 (citing *Mead v. McKittrick*, 223 Mont. 428, 430, 727 P.2d 517, 519 (1986)).

*Id* at ¶12.

Here, Walker was acting within her jurisdiction on a criminal proceeding in the justice court. She was acting as a justice of the peace when she determined Skurdal could not represent Trow during the proceeding. Decisions during proceedings are a normal function of the judiciary. Both Walker and the County are immune from suit for Walker's decision. The Court should affirm the District Court's decision.

### **iii. Skurdal Failed to Amend his Complaint Prior to Dismissal**

Skurdal argues the Court erred when it did not allow him to amend his complaint. Opening Brief, p. 8. The Court issued its Order dismissing the case with prejudice on September 24, 2024. Doc. No. 13. When the Court issued its Order, Skurdal had not filed a motion to amend his complaint or amended complaint. There was no failure by the Court to allow Skurdal to amend his complaint. The complaint was dismissed prior to any attempt to amend. According to Skurdal, if the district court had allowed him to file an amended complaint, he could have pled a cause of action. *Id*. Skurdal does not provide an explanation of how he could have pled a cause of action. Skurdal did not provide how he could have alleged Walker erred

when he did not allow him to represent Trow or how she and the County would not be entitled to judicial immunity. As outlined above, it would have been futile for him to file an amended complaint. He does not have a cause of action. The issue was not raised below in the District Court and there is no decision for the Court to deny or affirm.

## **VII. CONCLUSION**

The Court should affirm the decision of the District Court to grant Walker and the County's motion to dismiss. The District Court did not err when it was determined Walker made the correct decision in barring Skurdal from representing Trow. Separately, Walker and the County have judicial immunity because Walker acted in her judicial capacity when she made the decision not to allow Skurdal to represent Trow. Finally, the court did not fail to allow Skurdal to amend his complaint. The Court should affirm the District Court's dismissal with prejudice.

Dated this 24<sup>th</sup> day of December 2024.

/s/ Steven Williams  
Steven Williams  
Deputy Yellowstone County Attorney

## **Certificate of Compliance**

Pursuant to Mont. R. App. P. 11(4)I of the Montana Rules of Appellate Procedure, I certify that this answer brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows does not exceed 10,000 words (exactly 1910), not averaging more than 280 words per page, excluding the certificate of compliance

Dated this 24<sup>th</sup> day of December 2024.

/s/ Steven Williams  
Steven Williams  
Deputy Yellowstone County Attorney

## Certificate of Service

I, Steven Williams, hereby certify that I have served true and accurate copies of the foregoing Brief – Appellee’s Answer Brief to the following on December 24, 2024:

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Dated this 24<sup>th</sup> day of December 2024.

/s/ Steven Williams  
Steven Williams  
Deputy Yellowstone County Attorney

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