

IN THE SUPREME COURT OF THE STATE OF MONTANA

CAUSE No. DA 24-0619

JAMES MARION DEL DUCA

Appellant,

V.

ARIA SKYDANCER (F/K/A Kristin Marie Del Duca),

Defendant and Appellee.

APPELLANT'S OPENING BRIEF

**APPEAL FROM MONTANA EIGHTEENTH JUDICIAL DISTRICT
COURT ORDER OF DISMISSAL, HON. RIENNE MCELYEA PRESIDING**

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I. TABLE OF CONTENTS

I. TABLE OF CONTENTS..... 3

II. TABLE OF AUTHORITIES..... 4

III. STATEMENT OF ISSUE FOR REVIEW..... 5

IV. STATEMENT OF CASE..... 5

V. STANDARD OF REVIEW..... 6

VI. SUMMARY OF ARGUMENT..... 6

VII. ARGUMENT..... 7

1. The District Court erred in concluding that James failed to state a claim for
which relief can be granted..... 7

2. The District Court erred by dismissing James' case with prejudice..... 8

3. The District Court abused its discretion by denying James' request to
amend his complaint..... 9

4. The District Court erred in failing to explain its ruling.....10

VIII. CONCLUSION..... 11

CERTIFICATE OF COMPLIANCE..... 13

CERTIFICATE OF SERVICE..... 14

APPENDIX..... 15

II. TABLE OF AUTHORITIES

CASES

Ally Fin., Inc., v. Stevenson, 2018 MT 278, 393 Mont. 332, 430 P.3d
522.....7,8,9,10

Cole v. Flathead County, 236 Mont. 412, 419, 771 P.2d 97
(1989).....8,9

Meagher v. Butte-Silver Bow City-County, 2007 MT 129, ¶ 13, 337 Mont. 339, 160
P.3d 552.....7

Sacco v. High Country Independent Press, Inc., 271 Mont. 209, 52 Mont. St. Rep.
407.....7

TABLE OF STATUTES AND COURT RULES

M. R. App. P. 6(1)..... 6

M. R. Civ. P. 12(b)(6)..... 6,7,8,10,12

M. R. Civ. P. Rule 15(a)(2)..... 9,10

M. R. Civ. P. Rule 41, (2)(b)..... 8

M. R. Civ. P. 52(a)(3)..... 10,12

IV. STATEMENT OF ISSUES FOR REVIEW

1. Did the District Court err in concluding that James failed to state a claim for which relief can be granted?
2. Did the District Court err in dismissing James' case with prejudice?
3. Did the District Court abuse its discretion by denying James' request to amend his complaint?
4. Did the District Court err in failing to explain its ruling?

V. STATEMENT OF CASE

Appellant (James) filed his COMPLAINT AND DEMAND FOR JURY TRIAL in the 18th Judicial District Court, Gallatin County, Montana on July 9, 2024 (see EXHIBIT 1).

Defendant filed her MOTION AND BRIEF TO DISMISS; REQUEST FOR ATTORNEY'S FEES on July 24, 2024. (see EXHIBIT 2).

James sought to amend his complaint and filed his PLAINTIFF'S MOTION FOR LEAVE TO ALLOW FOR AMMENDED COMPLAINT AND DEMAND FOR JURY TRIAL on August 19, 2024 (see EXHIBIT 3).

James filed his PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION AND BRIEF TO DISMISS; REQUEST FOR ATTORNEY'S FEES on August 22, 2024 (see EXHIBIT 4).

The District Court issued their ORDER OF DISMISSAL AND DENYING ATTORNEY'S FEES on October 01, 2024 (see EXHIBIT 5).

VI. STANDARD OF REVIEW

We review de novo a district court's ruling on a motion to dismiss pursuant to M. R. Civ. P. 12(b)(6). *Meagher v. Butte-Silver Bow City-County*, 2007 MT 129, ¶ 13, 337 Mont. 339, 160 P.3d 552. A motion to dismiss under Rule 12(b)(6) admits the allegations in the well-pled complaint. The court must consider the complaint in the light most favorable to the plaintiff in evaluating the motion. The court also must take as true all the allegations of fact contained in the complaint. *Meagher*, ¶ 13.

Denial of leave to amend is reviewed for abuse of discretion. *Ally Fin. Inc. v. Stevenson*, 2018 MT 278, ¶10, 393 MONT. 332, 430 P.3d 522. "Refusal to permit an amendment to a complaint which should be made in the furtherance of justice is an abuse of discretion." *Ally Fin.*, ¶ 13.

VII. SUMMARY OF ARGUMENT

The Court, in its Order of Dismissal, provided no explanation whatsoever for its actions. James' case was dismissed with prejudice and James was denied the opportunity to cure defects in his original complaint through amendment. No hearing took place. No items of evidence were admitted and no witnesses were heard. There were no findings of fact or conclusions of law offered as justification.

James was improperly denied due process; the opportunity to present his evidence, his witnesses, and his case to a jury. This is improper procedure and a miscarriage of justice. The District Court abused its discretion and violated James' right to due process. This Court should therefore reverse and remand to the District Court with instructions to grant leave to amend, and/or state its rationale for granting the motion to dismiss with prejudice.

VIII. ARGUMENT

1. The District Court erred in concluding that James failed to state a claim for which relief can be granted.

James' complaint should not have been dismissed for failure to state a claim upon which relief can be granted. In *Meagher v. Butte-Silver Bow City-County*, 2007 MT 129, ¶ 13, 337 Mont. 339, 160 P.3d 552 this Court held that a motion to dismiss under Rule 12(b)(6) admits the allegations in the well-pled complaint. The court must consider the complaint in the light most favorable to the plaintiff in evaluating the motion. The court also must take as true all the allegations of fact contained in the complaint. *Meagher*, ¶ 13. James' Complaint seeks damages for intentional and negligent infliction of emotional distress. In James' Complaint he states at length his claims for which relief can be granted. This Court, in *Sacco v. High Country Independent Press, Inc.*, indicated its willingness to hear cases of this nature. 271 Mont. 209, 896 P.2d 411, 426-29. However, since the District

Court failed to state its reasons for dismissal with particularity, James is uncertain precisely how the District Court erred.

2. The District Court erred by dismissing James' case with prejudice.

The District Court, by granting Defendants' motion to dismiss, dismissed James' claim with prejudice. This does not comport with the M. R. Civ. P. Rule 41, (2)(b), which states;

(b) Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule -- except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19 -- operates as an adjudication on the merits.

James did not fail to prosecute or to comply with the M. R. Civ. P. Rule 41 and thus the District Court would properly have denied Defendants' motion to dismiss. James' case was well pleaded, contained specificity of the harms suffered by him, and properly would have proceeded to trial in order for an actual adjudication on the merits to take place.

By granting Defendant's motion to dismiss with prejudice the District Court did, *de facto*, render adjudication on the merits, and render a summary judgement against James, without hearing any witnesses, examining any evidence, or making any finding of fact or conclusions of law. This was an error. In *Cole v. Flathead County* this Court ruled that it is improper for a district court to render judgement

without first making a finding concerning an absence of any genuine issue of material fact. 236 Mont. 412, 419, 771 P.2d 97 (1989).

Dismissal with prejudice, to be justified, would require that James' pleading be faulty and that the faults contained within it be beyond cure. James' case was well pleaded and faults contained in it could be cured if James was properly given the opportunity to do so. James would then have the opportunity to file his corrected pleading at a future date. Dismissal with prejudice was not justified.

3. The District Court abused its discretion by denying James' request to amend his complaint.

James requested that the District Court grant him leave to amend his complaint and thereby have opportunity to cure any deficiencies. His request to amend was denied counter to M. R. Civ. P. Rule 15(a)(2) which states plainly;

Amended and Supplemental Pleadings.

(a) Amendments before Trial.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Furthermore, this Court ruled in *Ally Fin., Inc. v. Stevenson* that refusal to permit an amendment to a complaint which should be made in the furtherance of justice is an abuse of discretion. 2018 MT 278, ¶13, 393 Mont. 332, 430 P.3d 522. The District Court did abuse its discretion by denying James' request to amend his complaint. "A district court may properly deny a motion to amend for undue delay,

bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by allowance of the amendment, [or] futility of the amendment, etc."

(internal quotation omitted). *Id.* None of those circumstances are present here. The District Court made no findings that would support a conclusion that those circumstances were present. Furthermore such a finding would be unsupported by the record.

4. The District Court erred in failing to explain its ruling.

The District Court erred when it provided no explanation of why it denied James' motion to amend even though Defendant had offered their *Motion and Brief to Dismiss; Request for Attorney's Fees* under M. R. Civ. P. 12 (b) (6). The plain language of M. R. Civ. P. 52(a) (3) states unambiguously:

(3) For a Motion. The court is not required to state findings or conclusions when ruling on a motion unless these rules provide otherwise. When ruling on a motion under Rule 12 or 56, a court shall specify the grounds therefor with sufficient particularity as to apprise the parties and any appellate court of the rationale underlying the ruling. This may be done in the body of the order or in an attached opinion.

By the same standard the District Court again erred when it provided no explanation of why it granted Defendants' motion to dismiss.

VIII. CONCLUSION

1. The District Court erred by concluding that James had failed to state a claim for which relief can be granted. Intentional and/or negligent infliction of emotional harm is a claim for which relief can be granted under Montana law.

2. The District Court incorrectly dismissed James' claim with prejudice. The District Court erred in two ways:

(a). The District Court erred by issuing its Order without first establishing findings of fact or conclusions of law. No hearing took place, no testimony was heard and no evidence was presented. James was not afforded the opportunity to properly present his case and his due process rights were violated.

(b). The District Court erred when it ordered dismissal with prejudice. For dismissal with prejudice to be justified would have required that James' pleading be both faulty and that the faults contained within it be permanently beyond cure. James' pleading was, to the contrary, well pleaded and the faults contained in it were curable, if given the opportunity. His cured pleading could be filed again at a future date if his action had been dismissed without prejudice. The District Court erred by dismissing his well pleaded case with prejudice and James' due process rights were violated.

3. The District Court's Order granting Defendant's 12 (b) (6) *Motion and Brief to Dismiss; Request for Attorney's Fees*, which was granted in part, incorrectly also denied Plaintiff's Motion for Leave to Allow for Amended Complaint and Demand for Jury Trial. James had good cause to amend his Complaint and justice would have been well served by allowing him to do so. The District Court abused its discretion by denying James' motion to amend his complaint.


4. The District Court provided no explanation of why it granted Defendants' motion offered under M. R. Civ. P. 12 (b)(6). The District Court also provided no explanation of why it denied James' motion to amend. The plain language of M. R. Civ. P. 52 (a) (3) states unambiguously that a court shall do so. The District Courts' rationale is not sufficiently clear as to apprise James or this Court thereof; therefore the requirements of Rule 52 have not been satisfied.

James therefore requests that this Court reverse and remand to the District Court with instructions to grant leave to amend, and/or state its rationale for granting the Defendants' motion to dismiss with prejudice.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points and does not exceed 10,000 words.

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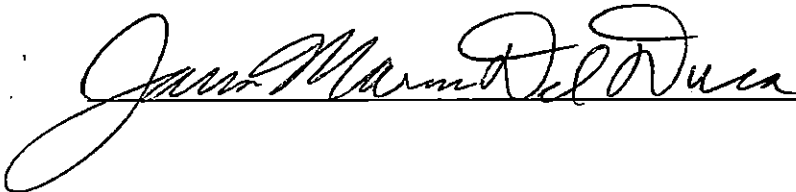
 Date 2/9/2025

CERTIFICATE OF SERVICE

The undersigned does hereby certify, under penalty of perjury, that on the 10th day of February, 2025, a true copy of the foregoing document was served by email to the following individual(s) by email transmission, addressed as follows, unless otherwise indicated below:

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APPENDIX

TABLE OF EXHIBITS

Exhibit 1. PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

July 9, 2024; 5

pages.....13-17

EXHIBIT 2. MOTION AND BRIEF TO DISMISS; REQUEST FOR ATTORNEY'S FEES

July 24, 2024; 5

pages.....18-22

Exhibit 3. PLAINTIFF'S MOTION FOR LEAVE TO ALLOW FOR AMMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

August 19, 2024; 3

pages.....23-25

**EXHIBIT 4. PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION AND
BRIEF TO DISMISS; REQUEST FOR ATTORNEY'S FEES**

August 22, 2024: 6

pages.....26-31

EXHIBIT 5. ORDER OF DISMISSAL AND DENYING ATTORNEY'S FEES

October 01, 2024; 1

page.....32