ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 24-0717

Austin Roger Carter,

Pro Se,

Plaintiff and Appellant,

v.

Magris Talc USA, Inc., Louise M. Carter, AND Julie Ann Bittick

Defendants and Appellees.

APPELLANT'S REPLY BRIEF

On Appeal from Cause No. DV 16-2024-315-WS in the Montana Eighteenth Judicial District Court,

Gallatin County, The Honorable Andrew Bruener, Presiding

Austin Roger Carter
Pro Se
96 MT HWY 2 E
Whitehall, Montana 59759
Telephone: (307-705-2159
austinrcarter@hotmail.com
Plaintiff and Appellant, Pro Se

Mark R. Feddes
CROWLEY FLECK PLLP
1915 South 19th Avenue
P.O. Box 10969
Bozeman, MT 59719-0969
Telephone: (406) 556-1430
mfeddes@crowlyfleck.com

Jeffrey M. Roth
CROWLEY FLECK PLLP
101 E. Front Street, Suite 301
Missoula, MT 59802
Tele: (406) 523-3600
jroth@crowleyfleck.com

Attorneys for Defendants and Appellees

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 24-0717

Austin Roger Carter,

Pro Se,

Plaintiff and Appellant,

v.

Magris Talc USA, Inc., Louise M. Carter, AND Julie Ann Bittick

Defendants and Appellees.

APPELLANT'S REPLY BRIEF

On Appeal from Cause No. DV 16-2024-315-WS in the Montana Eighteenth Judicial District Court,

Gallatin County, The Honorable Andrew Bruener, Presiding

Austin Roger Carter
Pro Se
96 MT HWY 2 E
Whitehall, Montana 59759
Telephone: (307-705-2159
austinrcarter@hotmail.com
Plaintiff and Appellant, Pro Se

Mark R. Feddes
CROWLEY FLECK PLLP
1915 South 19th Avenue
P.O. Box 10969
Bozeman, MT 59719-0969
Telephone: (406) 556-1430
mfeddes@crowlyfleck.com

Jeffrey M. Roth
CROWLEY FLECK PLLP
101 E. Front Street, Suite 301
Missoula, MT 59802
Tele: (406) 523-3600
jroth@crowleyfleck.com

Attorneys for Defendants and Appellees

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Montana Code Annotated

OTHER

APPELLEES' ISSUES FOR REVIEW

A. Are the district court's orders dismissing Appellees/Defendants Louise M. Carter ("Louise") and Julie Ann Bittick ("Julie") pursuant to a Rule 12(b)(6) motion and denying Appellant/Plaintiff's ("Mr. Carter") motions for default judgment properly before the Court where they concern interlocutory matters that have not been certified for appeal?

B. If the issue is validly before this Court on appeal, did the district court properly dismiss Julie and Louise pursuant to a Rule 12(b)(6) motion under the Wrongful Discharge from Employment Act, Section 39-2-901, MCA, et. seq., where Julie and Louise are employees of Magris Talc USA, Inc. ("Magris") and not Mr. Carter's employer?

C. If the issue is validly before this Court on appeal, did the district court properly deny Mr. Carter's motions for default judgment against Defendants where Magris answered the complaint and Julie and Louise filed a joint Rule 12(b)(6) motion prior to Mr. Carter filing for default judgments?

APPELLANTS REPLY TO APPELLEES' RESPONSE

A. APPELLEES': THE ORDERS FROM WHICH MR. CARTER SEEKS APPEAL ARE INTERLOCUTORY ORDERS NOT PROPERLY BEFORE THE COURT.

Appellees, by and through their attorneys', comingle their issues to circumvent the laws and misrepresent the course of actions, Orders, Motions, and content of the initial complaint. The issue of the dismissal of Louise and Julie from the lawsuit is most definitely a dispositive Order and is identified as such by the district court "Because the Court finds the defendants' Rule 12(b)(6) arguments to be dispositive, the Court shall not consider their motion to dismiss under Rule 12(b)(2)." (Order Denying Default Judgements, November 19, 2024). It is also notable that the plural form of default judgement(s) is used in the order caption along with the finding that the order in whole is dispositive. It can only be concluded that these final orders mean that both Louise and Julie and the associated default judgements are final. Appellant filed his motions on April 29, 2024, and April 30, 2024, and are wholly part of the final order for these two defendants/appellees. Which brings finality to Mr. Carter's claims on Louise and Julie, as individuals to an end, as described in Mont. R. App. P. Rule 4(1)(a). The district court and Appellees twist Appellants complaint language and insist that these two are merely "employees" and not "individuals" and therefore not responsible for any blacklisting that is identified in the initial complaint and

executed by Julie and Louise and separate from the Magris issues. Rule 4 describes exactly what the district court Ordered for Louise and Julie stating, "Mont. R. App. P. Rule 4(1)(a) Final judgment. A final judgment conclusively determines the rights of the parties and settles all claims in controversy in an action or proceeding, including any necessary determination of the amount of costs and attorney fees awarded or sanction imposed." The district court identified that the order was dispositive, that the costs and fees were determined, and that Julie and Louise were dismissed from the case. Appellant argues that this is not interlocutory.

In the initial complaint Appellant stated specifically that "In every instance and at all times mentioned in this brief Louise M. Carter, Director of Supply Chain for Magris, is sued herein in both her official capacity and as an individual." And "In every instance and at all times mentioned in this brief Julie Ann Bittick, Director of Human Resources for Magris, is sued herein in both her official capacity at Magris and as an individual." (Initial Complaint, Doc. 1, ¶ # 7 and 8, on page 8), which is contrary to the portrayal of Appellees, and the district courts, depiction that they are simply "employees" "and not Mr. Carter's employer". This shared view with the district court, is where they disallow the Appellees of being named as "individuals" and is not how Appellant plead in his complaint. Appellant specifically named them as individuals as they were the two who conjointly participated in blacklisting and the constructive discharging of Mr. Carter through

torturous methods including gaslighting and separate from the Magris issues. Regardless, these two have been dismissed from the case and this cannot be remedied as it ends Appellants separate claim under the blacklisting provisions of WDEA.

While Appellees list several erroneous reasons why Appellants appeal fails, none of the reasons are believable or credible. Appellees invite the notions that the orders are interlocutory not subject to substantive review when the facts say otherwise. Appellees' even invite contention that the district courts orders being named dispositive are not, all to serve the purpose of rewriting well standing Montana Law and the United States Constitutional provisions protecting citizens' rights. Stating that a final judgement is not a final judgement in the case of Louise and Julie is abhorrent and flat false. Appellees state that, "Although Julie and Louise were dismissed from the action," Appellees still insist that the district courts orders are interlocutory, but only when it conveniently is in favor of them, stating "Interlocutory orders, such as those at issue, are not appealable absent special circumstances," Rule 4(1)(a), says otherwise.

Appellee's claim about this appeal, "The district court has not issued a final judgment in this matter, and the orders from which Mr. Carter seeks appeal do not fall within any appealable order identified under Rule 6.", Appellant argues that under Mont. R. App. P. 6(3)(b), it gives the provisions of Mont. R. Civ. P. Rule

60(b), Rule 60(b)(6) addresses any other reason that justifies relief, Rule 60(b)(3) addresses misrepresentation and misconduct by an opposing party, which Appellant argues that attempting to interpret the meaning of Appellants initial complaint to read "employee" when it specifically states "individuals" is misrepresentation. Appellant also argues that the district court twice "denied" the motion for default judgments on Louise and Julie, and the district court did not "expressly determine[s] that there is not just reason for delay" as required in M. R. Civ. P. 54(b)(1), as detailed in Rule 6(6), as fact the district court had no regard for any expedience and waited over six months, over one hundred and ninety nine days to deny the motion for default judgements, and the dismissing of Julie and Louise, and in doing so the district court prejudiced Appellant by the courts delays. This final dispositive Order of dismissal and denial of default judgment are allowed as appealable under Rule 6(3)(b) for the special circumstances surrounding default judgement, and under Rule 4(1)(a) on the dismissal.

Appellant did not appeal to interlocutory orders as they were dispositive orders as described by the district court. Appellees swiftly motioned the district court, for Louise and Julie to be immediately removed from the caption and the district court agreed and Ordered such, as they were dismissed from the case and the default judgements without delay and lightning fast.

B. APPELLEES': THE DISTRICT COURT CORRECTLY DISMISSED JULIE AND LOUISE PURSUANT TO THEIR RULE 12(B)(6) MOTION BECAUSE THE WDEA PROVIDES THE EXCLUSIVE REMEDY FOR ALLEGED WRONGFUL DISCHARGE AGAINST AN EMPLOYER, NOT INDIVIDUAL EMPLOYEES.

The American Heritage® Dictionary of the English Language, 5th Edition, defines an "Employee" 1. A person who works for another in return for financial or other compensation, and 3. An individual who provides labor to a company or another person. Appellant claims employees, individuals, and person(s) are one in the same. Appellees' argue that the district court correctly applied the WDEA claiming it precludes individual liability, which is entirely false and misleading. Again, they attempt to adhere the "employees" to the "employer" moniker to Julie and Louise to avoid calling them "individuals" or "persons", also pushing the narrative that this is about WDEA restricting recovery against Julie and Louise for their blacklisting of Appellant, which is false. Under Title 39, WDEA, It states in "MCA 39-2-802. Protection of discharged employees. If a person, after having discharged an employee from service, prevents or attempts to prevent, by word or writing of any kind, the discharged employee from obtaining employment with any other person, the discharging person is punishable as provided in 39-2-804 and is liable in punitive damages to the discharged person, to be recovered by civil action." It also details in "39-2-803. Blacklisting prohibited. If a company or

corporation in this state authorizes or allows any of its agents to blacklist or if a person does blacklist any discharged employee or attempts by word or writing or any other means to prevent any discharged employee or any employee who may have voluntarily left the company's service from obtaining employment with another person, except as provided for in 39-2-802, the company, corporation, or person is liable in punitive damages to the employee prevented from obtaining employment, to be recovered in a civil action, and is also punishable as provided in 39-2-804. It also describes that the person or individual is guilty of a misdemeanor, in "39-2-804. Violation of part a misdemeanor. Every person who violates any of the provisions of this part relating to the protection of discharged employees and the prevention of blacklisting is guilty of a misdemeanor." This specifically names the person and details person as liable.

Appellees/Defendants claim in their response that Mr. Carter failed to state a blacklisting claim, however Mr. Carter stated this throughout the initial complaint about the blacklisting and was a part of his basis for naming the individuals, Louise and Julie, as responsible for this blacklisting (Initial Complaint, Doc. 1 p.p. 7 and 9). While the district court failed to acknowledge this in an attempt to rewrite the laws, and while the Appellees attorneys fail to recognize the blacklisting, identifying in their (Appellees Response Brief, p.p. 6, and 14) stating, "Contrary to the assertion in his opening brief, Mr. Carter's complaint fails to state a

blacklisting claim." And "Mr. Carter failed to allege a single element of blacklisting. (*See generally* Dkt. 1.)". Appellant clearly demonstrated that he had been blacklisted and that the Appellees had documented, in writing, an entirely false PIP, which they still rely on, as well, Appellant provided the true Performance Review, and documentation to the Montana Unemployment Divisions, Department of Labor & Industry fact findings to support his position. Appellees reliance on the Performance Improvement Plan (PIP) is nothing short of admitting that Julie and Louise blacklisted Mr. Carter, then blackmailed him with his yearly bonus to coerce him into signing the Separation Agreement and General Release of All Claims, that Julie and Louise authored.

In (Appellees Response Brief, p.p. 14-15) they stated, "Mr. Carter asserts the district court erroneously "converted" and applied the Workers Compensation Act ("WCA"). (App. Br., p. 7-8, 25.), asserting that the district court was correct in converting the case to a Montana Workers Compensation Act where the district court stated that the WCA, "provides an exclusive remedy for employees of covered employers for on-the-job injury but does not bar actions against fellow employees for intentional injury (see MCA §§ 39-71-411; and 39-71-413), the WDEA provides an exclusive remedy for 'wrongful discharge' but would not necessarily bar actions against fellow employees for other kinds of wrongful conduct or intentional torts (e.g., battery)." (Doc. 26, p. 3.)", implying that

Appellant must be assaulted or battered by Louise and Julie for them to be considered an individual, person, or employee and in the case of blacklisting coupled with blackmail they could only be viewed as "employees" of the company and were unaccountable for any acts unless they assaulted Appellant. This is not consistent with TITLE 39. LABOR, CHAPTER 2. THE EMPLOYMENT RELATIONSHIP, Part 8. Blacklisting and Protection of Discharged Employees. Appellees also fail to admit to their actions against Appellant when refusing to disclose the reason for discharge in MCA 39-2-801.

Appellees also attack Appellant about his Constitutional Rights, and his lack of any of a constitutional question. This is contrary to the Constitution of the United States of America's Seventh (VII) Amendment as it applies to Appellants rights. Appellees and their attorneys are apparently unaware of the Rights given through the Constitution to the citizens of the United States. In Appellees' Response Brief they state, "Mr. Carter attempts to frame the issue as a constitutional question. (Notice of Constitutional Challenges, p. 1-3) The facts and law present no cognizable constitutional question. The issue is a straightforward question of statutory interpretation and application to the facts as plead." (Appellees Response Brief p. 10). Appellees are apparently ignorant of Constitutional Rights, as the Seventh Amendment specifically states, "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right

of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.", which Appellant will not receive this Right absent action in this appeal, by this Court. Appellant sees no value in diminishing the constitutional provisions and rights and allowing this injustice to occur.

C. APPELLEES': THE DISTRICT COURT CORRECTLY DENIED MR. CARTER'S MOTIONS FOR DEFAULT AGAINST DEFENDANTS BECAUSE DEFENDANTS ANSWERED OR DEFENDED, AND MR. CARTER'S MOTIONS WERE PREEMPTED BY MAGRIS'S ANSWER AND JULIE AND LOUISE'S JOINT MOTION TO DISMISS.

Appellees argue that the Montana Code Annotated and the subsequent laws are incorrect and that Appellees and the district court have better remedies for delinquency, defaults and times for the legislature and other judges of Montana to follow. However, Appellant offers up what the current rules say and the common interpretation. Rule 55(a) Default Judgement. The district court is ruling from the bench to explain away the delinquency by burden shifting to Appellant. Appellees attorneys are attempting to argue under the same premise that somehow Appellees should have special treatment for their admitted tardiness. Appellant motioned for an MCA Rule 55(a), Default Judgement, and states "Rule 55 (a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or

otherwise, the clerk must enter the party's default." Rule 55(b)(1), says, "By the Clerk. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk -- on the plaintiff's request, with an affidavit showing the amount due -- must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.", Rule 12(a)(1)(A) "A defendant must serve an answer within 21 days after being served with the summons and complaint, unless the court orders otherwise under Rule 4(c)(2)(C)." But the nonanswer is somehow shifted to be Appellants fault, and the lateness is allowable under the new rules because of an internal "misunderstanding" of all three parties, however, this delay is a common occurrence with Appellees' and with the district court waiting for over six months for any action on the issues.

If appellant had been delinquent on his appeal there is absolutely no doubt that his appeal would have been rejected as stated by the Supreme Court of Montana, "Because filing even one day late can cause you to lose your right to appeal" (Civil Handbook p. 4), so must it be true for any other rule or law in the code, if you are late, you are late, and other provisions of the law take effect, like default. It is admitted that Magris, Louise, and Julie were all delinquent on their responses and despite all of the pleas that they were mistaken and had excuses, the fact is that Appellant is the one burdened with the appeal and being forced to

defend a law that is well settled in the Montana Code Annotated. It is certain that in any other case there would be no burden shifting and the courts would adhere to the strict due dates, it would be a slippery slope otherwise. Will it be this court's opinion that Appellees and the district court have special allowances for those who just got "confused" and so it is now the responsibility of the Plaintiff/Appellee to defend the laws that ends his case? MCA Rule 55(a), "requires that the Clerk of Court enter a default when a party has failed to defend a claim, and if the damages are verified by affidavit." Appellant did in fact file the affidavit and had a specific and concise accounting of the "sum made certain". Rule 12 defines when that answer must occur, within 21 days after beings served with the summons, and none of the parties answered timely. There is nothing in the laws, that Appellant could find, that details when a plaintiff must file on a defendant for default judgement when it happens.

Appellant/Plaintiff made it clear in his (Motion for Default Judgement, April 26, 2024, p.p. 1-3) "There is no claim by Magris Talc USA, Inc. of relief from a Default Judgement based on MCA Rule 60(b)(1-3), because no claim to this exists. State Law requires that a default judgement be entered per Montana Code, Title 25, Chapter 23, Part 1 Rules, Rule 21. Entry of Judgement, (8)(a) (1) "When a party against whom a judgment for affirmative relief is sought has failed to answer or reply as provided by these rules upon written motion by the plaintiff or

counterclaiming defendant, the judge or clerk must enter the default against such party, and 2). When a default has been entered against a defendant for failure to answer and if the plaintiff's claim against the defendant is for a sum certain or for a sum that can by computation be made certain, upon the plaintiff's written request stating the amount due, the judge or clerk must enter judgment for that amount and costs against the defaulted defendant." Appellant could not identify that there was specific timing in the law that required him to file in any time space, only that it was to be filed if the party was not timely.

Appellees contend that there is no calculatable inputs to figure out the sum made certain and seem confused about mathematics and numbers. Plaintiff contends that there is no dispute of how much Plaintiff made $120, 810.38, per year plus the annual incentive plan averaging at a minimum of $10,132.60 per year, as well as the health insurance and other benefits offered as payments for Plaintiffs service/employment which those losses are $17,496, for a total of $541,267.92, over the allowable four-year span in MCA "39-2-905. Remedies. (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest on the lost wages and fringe benefits." As required Mr. Carter attached his affidavit pertaining to his losses, and precise calculations to arrive there. There were no extensions requested for their answers and the

Defendants Magris Talc, USA, Inc., Julie and Louise, blatantly disregarded the Summons and all of its lawful accusations. Appellees argue otherwise in their Response Brief to this appeal and imply that Appellant must be held to a standard that they are not held to, and that Magris only had a minor delay, fact is that they all were delinquent. Regardless, it was beyond the lawful due date and unfairly prejudiced Appellant as is evident in his having to appeal to this Court.

Appellant responds to the conceding responses of Appellees, that they were in fact delinquent on all accounts of answering the complaint, untimely, and confirms Appellants stance on the default judgment motions. In Appellees' Response Brief (Page 2) they state, "the minor delay in answering did not unfairly prejudice Mr. Carter", yet here Appellant is having to defend his case here in the Montana Supreme Court on a well-established laws' due to the prejudicing of this delay.

Conclusion

Based on the foregoing reply, Appellant prays this Court finds that the Appellees Response Brief is insufficient and misleading and find in favor of Mr. Carter consistent with his initial appeal brief requests.

Austin Roger Carter, Pro Se
96 MT HWY 2 E
Whitehall, Montana 59759

CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing with the Clerk of the Montana Supreme Court, Helena Montana, hand delivered on March 31, 2025, and to the following via United States first class mail on March 31, 2025:

Mark R. Feddes
CROWLEY FLECK PLLP
1915 South 19th Avenue
P.O. Box 10969
Bozeman, MT 59719-0969
Telephone: (406) 556-1430
mfeddes@crowlyfleck.com

Jeffrey M. Roth
CROWLEY FLECK PLLP
101 E. Front Street, Suite 301
Missoula, MT 59802
Tele: (406) 523-3600
jroth@crowleyfleck.com

Austin R. Carter

Pro Se

CERTIFICATE OF COMPLIANCE

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

March 31, 2025

Date

Signature