

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 25-0198

FILED

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04/14/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 25-0198

Bowen Greenwood
Clerk of Supreme Court
State of Montana

AUSTIN LAKE,

Petitioner/Appellant,

v.

MONTANA DLI LABOR & Industry,
HUMAN RIGHTS BUREAU,

Respondent/Appellee.

OPENING BRIEF OF APPELLANT

On Appeal from the Montana Twentieth Judicial District Court, Sanders County,
The Honorable Molly Owen, Presiding.

APPEARANCES

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STATEMENT OF ISSUES

As the Sanders County did not consider any underlined substantial in dismissing Lake's Petition for Judicial Review, this now adds another issue before this court for review; Issues:

1. Whether the District Court's "conclusions of law" were incorrect for not considering critical facts in D.C. case no. DV 24-96 (a) upon the Departments failure to submit an "answer brief" Rule 2(c) and the Dept's failure to serve parties pursuant to M.R.Civ.P. Rule 5(b)(2).
2. And whether the outcome then became a question controlled by "settled law" as required in Rule 14(c) "subject to summary ruling by the district court."

Other relevant and critical issues before this court are:

3. Whether S.C. District Court abused its discretion upon declaring Lake a vexatious litigant in case no. DV 24-97 by (a) rejecting Lake's reply brief and opposition to the motion (Doc. Appendix) denying Lake "reasonable time to respond" Rule 11(1) "failure of consideration" by the district court preventing "reasonable time" Rule 8. (b) To "deny allegations asserted by opposing party" and Rule 7(2) "answer to a complaint" then rejecting Rule

11(4) “denials of factual contentions warranted on evidence” submitted by Lake on 12/9/2024 and (c) whether S.C. district court abused its discretion upon its err of prematurely dismissing Lake’s petition for judicial review just 13 days after the Dept.’s motion to dismiss (Doc. D.C. order) then, (d) rejecting Lake’s “opposition to motion of dismissal” for which D.C. received on 12/11/2024, and due to district court’s err of granting Dept.s “motion to dismiss” 17 days before the statutory deadline.

4. The Department’s response brief to Lake’s Petition for Judicial Review (Petition) for which I received in March of 2025 and was dated December 6, 2024 adds another issue to this court for review:
5. Whether Sanders County District Court erred by allowing the Dept.s response brief and Attorney Sharp’s request for the district court to deny Lake’s petition as the response/request was 56 days after the Petition was filed; well beyond the statutory deadline not to mention the request to deny was not in compliance with district court rules nor was it allowed during a pending motion. Again, this “presents a question controlled by settled law.” (Mont.Uni.Dist.Ct.Rule 2).

STATEMENT OF THE CASE

This is an appeal from a District Court order dismissing Lake's Petition for Judicial Review against the MT. Department of Labor and Industry Human Rights Bureau in case no DV 24-96 and also since it is relevant to the issues DV 24-97 MT. DLI Agency Counsel. The Department failed to comply with statutory filing requirements in both cases. In DV 24-96 the Dept. failed to file an answer brief and did not serve all parties as required in M.R.Civ.P. Rule 5(d)(2).

STATEMENT OF FACTS

As records indicate and as Agency Counsel for the Department reminds the courts and all parties of interest that Lake has filed multiple Petition's for Judicial Review at the district court level and appeals to the Supreme Court. Since I do not have the luxury of focusing on the relevant facts related to this Petition DV 24-96 or Appeal DA 25-0198 as no other matter, for other issues and accompanying facts of relevant and pertinent issues affecting this case are before this court.

The multiple filings by Lake has been necessary in order for me to achieve my commitment for nearly three years now in presenting issues to the court for the opportunity of a fair and rightful review. The biggest contributing factor for the

repeated filings has been the direct result of inaccurate interpretation of the issues by the department. Agency Counsel then proceeds to present legal argument and theories based on those inaccurate issues that have little or nothing to do with the real issues presented in Lake's Petitions. This has become very frustrating, time consuming and has prevented Lake with the inability to state his claim and has also placed an economic burden on all parties of interest and the Judiciary Courts. Petitioner Lake has made several attempts to alleviate these economic burdens as early as November and December 2023 by filing motions to combine all cases (D.C. Docs. Appendix) on the basis that the underlined issues in all these cases filed in district court were derived from the same issue. Those issues will be addressed at a more appropriate time as it mostly pertains to matters regarding district court case DV 24-97.

A straightforward look at the facts of this case reveals:

1. October 10, 2024 Lake filed Petition for Judicial Review. (D.C.D.S. 1)
2. October 24, 2024 Lake Submitted Opening Brief (D.C.D.S 3)
3. November 13, 2024 Samuel A. Fossum filed Notice of Appearance. (D.C. D.S. 4)
4. Then on Jan. 8th, 2025 Lake submitted a "Notice of Issues" that Department failed to submit answer brief (Docs. Appendix) that the case was briefed and

“ripe for ruling” included with Lake’s filing was a proposed order, a motion to amend the pleadings also served to all parties of interest.

5. Then Jan. 14th, 2025 the Department files a motion to dismiss (D.C. D.S. 6)
6. And Jan. 14, 2025 Dept.s Brief (D.C. D.S. 7)
7. Then Jan. 14, 2025 Dept’s Proposed order (D.C. Proposed)
8. On Feb. 4, 2025 Notice of Issues by Dept. (D.C. D.S. 8)
9. Then Feb. 12, 2025 Order Dismissing Petition granted (D.C. D.S. 9)

The other issues affecting this case is the filing of a motion to dismiss by the Department in case no. DV 24-97, on 11/26/24 (D.C. D.S. 5) also 11/26/24 was motion to declare Lake a vexatious litigant (D.C. D.S. 6) and brief to support (D.C. D.S. 6). Then on 12/6/24 Response Brief to Lake’s Petition was filed by Attorney Sharp for the Department (D.C. D.S. 7 R.B) which was 56 days after Lake’s petition and 28 days after Lake’s Opening Brief (D.C. D.S. 3). These facts conclude that the Department failed to submit its Response Brief within the statutory deadline pursuant to Mont. Unif. Dist. Ct. R. 2(b). Along with these facts shows that Sanders County District Court “abused its discretion” upon its err of a premature granting of the departments motion to dismiss on 12/9/24, 17 days before the statutory deadline and only 13 days after Dept’s motion to declare Lake a vexatious litigant. (D.C. D.S 6 B.S.)

As the records and facts also indicate, Lake's complaints/issues specified throughout all of his Petition's for Judicial Review in over 7 petitions filed in district court which Counsel for the Dept. refers to as "seeking reconsideration" on "previously ruled upon" petition's is inaccurate from the facts. The Department also refers to Lake's Petitions as being "an appeal from the Unemployment Insurance Appeals Board decision's" regarding eligibility of benefit's and good cause to backdate his claim. (D.C. B.S. D.S. 6) As Lake continues to provide conclusive evidence that those issues were never the issues presented in Lake's Petition's for Judicial Review (D.C. Doc. Pet. D.S. 1) and (D.C. O.B. D.S. 3) that the issue's the Dept. continues to present and provide legal argument on incorrect issues have already and were already resolved prior to the very first Petition for Judicial Review in District Court. (D.C. Doc. O.B.) Facts repeatedly provided by Lake also reveals that those facts were provided to the Board, district courts and the Department. Facts provided (Doc. #235 & # 240) also provide conclusive evidence that Lake had already been determined eligible by the Montana Unemployment Insurance Division Adjudication Unit stating that my separation of employment was "not for misconduct under Montana Code Annotated Section 39-51-201(19) and 39-51-2303." And "good cause to backdate has been established under Administrative Rules of Montana 24.11.441 and 24.11.204(19)." These facts

have simply been ignored with no mention in district court decisions or arguments presented by the Department.

As any additional facts are now irrelevant due to the substantial conclusive evidence that this case DV 24-96 and DV 24-97 for that matter “presents a question controlled by settled law” for which the district court overlooked this fact and was in error as its’ “conclusions of law” were incorrect upon reviewing “all relevant briefing” in their conclusion, however, according to law that conclusion became final when the Dept. failed to comply with statutory filing requirements and serve the opposing party within the statutory deadlines.

I will briefly provide the motive for the Department’s actions to avoid the real issues presented by Lake in his Petition’s and Appeals as those facts relate to the issues of this case. The issues described in Lake’s Petition and Opening Brief and the main issues/complaints of this case were originally filed with the MT. DLI HRB on October 10 and 11th, 2023 (Appendix Doc. 10-15) former intake interviews with Human Rights Bureau investigators Shaunie Aklestad and Kimberly Cobos. The complaints and specifics are also provided in Lake’s Petition and Opening Brief (Petition D.C. D.S. 1, D.C. O.B. D.S. 3). The original complaint was a Retaliation/Discrimination complaint against the Montana Department of Labor and Industry which began with the Department violating its own governing

laws. The Dept. and the district court have ignored these issues for which Lake fully briefed (D.C, D.S.1,3). Those issues have never been reviewed or ruled upon due to incorrect issues the Department presents in their answer brief. (D.C. D.S. 5). The Dept. also asserts (D.C. Response brief by Sharp DV 24-97) that Lake has combined UIAB and HRC actions which is in error. DV 24-97 was filed with separate issues. That case has also been appealed to the Supreme Court (DA 25-0088) for which will be briefed. And like the issues in this case, it's issues also have never been reviewed or addressed nor did district court make a decision on.

SUMMARY OF ARGUMENT

Straightforward review demonstrates “conclusions of law” were incorrect by the Sanders County district court upon making its decision based on “relevant briefing” by abusing its discretion regarding filing requirements and procedural time bar when the Department HRB failed to submit an “answer brief” and did not serve the required parties. District court erred in its analysis which presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court’s interpretation and application of the law were incorrect and “clearly erroneous.”

The Department and the district court have ignored the issue's and complaints in all of Lake's Petition's for Judicial Review and Appeals for which Lake has fully briefed and presented to the courts. The underlined issues throughout all of these Petition's and Appeals have never been reviewed or ruled upon. This is due to the constant incorrect issues being applied in every filing submitted by the Department. Attorney Sharp has presented too many issues for the Appellant to list for this court to review. This has not been a mistake or a "harmless err" this has been the intentional tactics and strategy and for which is the assigned duties of the agency counsel for the Dept. I have provided evidence, submitted motions and complaints in early filings for which most were "stricken" instead of submitting a reply/answer to the allegations. These tactics serves the main purpose of preventing the facts or real issues from being presented for review by keeping me busy answering to the constant flow of issues produced by the Dept.

SUMMARY OF ARGUMENT

A straightforward review of the district courts Order or ruling demonstrates that Sanders County district court's "conclusions of law" were incorrect upon making its decision. Not only did the Dept. present incorrect issues in its "relevant briefing," as is and has been the case in all previous filings by Lake, preventing

parties and the Depts. failure to submit an “answer brief” pursuant to M. Unif. Dist. Ct. Rule 2(c) as which were “conclusions of law.” For which that conclusion became final when the Dept. failed to submit an answer brief and serve all parties. This Court reviews a district court’s conclusion for correctness. *American Agrijusters Co. v. Montana Dept. of Labor & Indus., Bd. of Labor Appeals*, 1999 MT. 241, 17, 296 Mont. 176, 988 P.2d 782, citing to *Steer, Inc. v. Department of Revenue*, 245 Mont. 470, 474, 803, P.2d 601, 603 (1990). And the district court’s “conclusions of law” were incorrect upon making its determination based off of “all relevant briefing” rather than the questions of law for which it is confined to under the jurisdiction of the court. “The Petitioner bears the burden of showing that a finding is clearly erroneous, otherwise it is binding on the court.” *Terry v. Bd. of Regents* 220 Mont. 214, 217, 714 P.2d 151, 153 (1986). “The party appealing from an agency decision to the district court has the burden of showing that his rights were substantially prejudiced by an arbitrary or capricious or a clearly erroneous decision.” “There is not space here to fully address” all the issues and “numerous other clearly erroneous findings of fact” by agency counsel, “however, appellate briefs must contain a party’s arguments, and party’s may not incorporate arguments by mere reference to trial briefs or other sources.” *Barrett v. State* 2024 MT. 86, 28 n.4 416 Mont. 226, 547, P.3d 630 (citing *State v. Ferguson*, 2005 MT. 343, 40-41, 330 Mont. 103, 126 P.3d. “As to any finding of fact” through agency

counsel's incorrect interpretations "which is rejected or modified" by the agency counsel then the court should itself review such a finding of the agency under competent substantial evidence" under 2-4-621(3), MCA. If the court makes a determination that such finding was so supported it should then determine that a rejection or modification by the agency was "characterized" by abuse of discretion or clearly unwarranted of discretion" under 2-4-704(2)(a)(vi), MCA. *Fugate v. Shotgun Willies Inc.* 270 Mont. 47 51-52, 889 P.2d, 1185, 1187-88 1995. "The Appellant must direct the review to findings of fact or conclusions of law that it takes issue with" 2-4-702(1)(b), MCA "the party may not raise any other question not raised before the agency."

Agency Counsel has repeatedly argued that Lake is seeking "already reviewed or litigated issues." DV 24-96 is a complaint filed against the MT. DLI HRB for the initial charge/complaint of retaliation for filing a complaint against the Department. As all petitions for judicial review by Lake, the issues in his brief's and petition's still have not been addressed or reviewed. "The identity of issues is the most important element of issue preclusion." *Planned Parenthood v State* 2015 MT. 31, 13, 378 Mont. 151, 342 P.3d 684 (citing *Stapleton v. First Sec. Bank*, 207 Mont. 248, 258, 675 P.2d 83, 89 (1983). "Unless it clearly appears that the precise question involved in the second case was raised and determined in the former, the judgement is no bar to the second action." *Planned Parenthood*, 13 (quoting *Phx.*

ARGUMENT

The original complaint reported to the Montana Human Rights Bureau was on October 10th, 2023 regarding the initial complaints against the Department for their actions of retaliation and harassment. (Doc. 10-15, Appendix). Those issues have been presented in DV 24-96 Opening Brief (D.C. # 3) beginning with reduction in hours causing a separation of employment for reducing my hours on return from FMLA surgery. As I have presented in previous briefs (DA 24-0136, Appen. P. 11)

The matter was finally resolved through a settlement agreement. So the issues in this case became a complaint filed against the Dept. as it continued to use the false statements provided to the UID and UIAB which they have kept for records.

Pervious argument (D.C. D.S. 3) in briefing shows evidence that the binding contract discloses former employer's statements "not allowed in litigation" and a ruling by Hearing Board Officer Colleen Tanner in reference to the Dept. using a major portion was ordered "not allowed as to opinion and hearsay."

All evidence I have provided has been ignored. With two Supreme Court briefs due in less than a week I am not allowed the time to address all the issue's presented to both cases filed against the Dept. and I have chosen not to file an extension so this can end. The incorrect issues by the Department is a continued form of Retaliation as it forces me to address their issues then file another petition

in an attempt to present the (correct) facts/issues to be addressed in district court. This has been a strategy and tactic placing filing restrictions on active cases and mandates, to prevent any opposition while Dept. continues retaliate against Petitioner, ignore facts submitted to the district court (Jan. 8 D.C. Notice of issues). The same rejection and refusal of filings very similar to Lundeen vs. Lake County in the Twentieth Judicial District Court upon making its ruling in err for “failure to state a claim” R.12(b)(6) and for which Lundeen states: “without any explanation whatsoever, the district court arbitrarily refused to review her motion” and “its total disregard to Lundeens affidavit. Lundeen v Lake County. “for that evidence would not support conclusive to the Boards findings on erroneous admission/exclusion of evidence.” Praumba Cortes v. Uccello


“Relevant Judicial History (facts derived)” from UIAB records” which were determined “not allowed for litigation” in a binding contract and “as to opinion and hearsay.” The underlying issue however at this point and before this court is:

For the Departments failure to submit an answer brief pursuant to Un. Dist. Ct. Rule 2 and the Dept. did not serve all parties as required are “conclusions of law.” “this case presents a question controlled by settled law or by the clear application of applicable standards of review.” Internal Operating Rules

CONCLUSION

Since the District Court has erred as to the incorrect interpretation of the issues in this Petition for Judicial Review and as a result its conclusion of law were incorrect. In accordance with Rule 14(3)(a) with the district “court is proceeding under a mistake of law and is causing a gross injustice” (b) (4) “making litigation and the normal appeals process inadequate” for which the “case involves purely legal questions of statutory interpretation of state-wide importance. Appellant requests this courts acceptance of supervisory control and jurisdiction in a declaratory judgement action or to (iv) “substantiate the petition or conclusion of legal affect.”

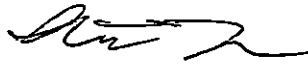
Respectfully submitted this 8th day of April, 2025.



Austin Lake

CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R App. P. 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this opening brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and word count is no longer than 30 typewritten pages or 10,000 words.



Austin Lake

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **opening brief** was sent by United States mail, postage prepaid, addressed to the following:

Samuel A. Fossum
P.O. Box 1728
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Dated this 9th day of April, 2025.



Austin Lake
Appellant