IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 25-0385

THOMAS SLIWINSKI,

Plaintiff and Appellant,

v.

LEAH MICHELLE COMEAU, aka LEAH COMEAU-RHODES,

Defendant and Appellee.

APPELLEE'S ANSWER BRIEF

On Appeal from the Montana Fifth Judicial District Court, Jefferson County,
Cause No. DV-2025-09
the Honorable Luke Berger Presiding

APPEARANCES:

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

Did the District Court correctly dismiss the Appellant's Complaint for defamation and civil conspiracy against Leah?

STATEMENT OF THE CASE

There is a long background between Leah and the Appellant. The instant appeal is about a lawsuit Appellant filed against Leah because he was unhappy that she spoke against his request for parole. Appellant alleged that Leah made statements both to the Board of Pardons and Parole and to others, including through social media, regarding her long history of abuse at the hands of Appellant. He alleged that relief was available to him under theories of defamation and civil conspiracy. The District Court dismissed Appellant's complaint under Rule 12(b)(6). Appellant had an adequate opportunity to present his case and failed to do so in a legally sufficient manner, because there is no cause of action for an inmate who is upset about a victim of his crimes recounting the abuse he inflicted upon her.

SUMMARY OF ARGUMENT

Mr. Sliwinski may not sue the victim of his crimes for speaking out against his request for release from prison. Leah's argument is premised upon the absolute statutory privilege of her publications to the Montana Board of Pardons and Parole. Alleged re-publications and requests for support via social media enjoy that same privilege. Leah's online outreach to her friends and family in an effort to garner strength and support during a difficult time does not constitute a civil conspiracy. As a victim of the very crimes which lead to Appellant's prison sentence, the sentence from which he sought parole, Leah's alleged publications were absolutely privileged. It is her right to speak against her abuser and her privilege to make those statements in connection with an official proceeding.

STATEMENT OF THE FACTS

The facts in issue are those alleged in the Appellant's complaint. The allegations are to the effect that Leah made publications, oral or written, that Appellant should not be released from prison early and why she believed so. The reasons why Leah does not want Appellant released are related to the abuse he perpetrated against her, which is related to the reason for his incarceration. The publications complained of are alleged to have been made to the Montana Board of Pardons and Parole and on

social media. The alleged defamatory statements are summarized and re-stated as follows, and as presented to the District Court:

1. Appellant is a child abuser, child rapist, in prison for rape, wife abuser and a violent person;
2. Leah hates the Appellant and wants him to remain in prison; and
3. Appellant was found guilty in a court of law.

Appellant also alleged that Leah engaged in a civil conspiracy by inviting social media "followers" to join her in writing to the Montana Board of Pardons and Parole to deny Appellant's request for parole.

Appellant is suing Leah for recounting her lived experiences as his child bride, along with the events of *State v. Sliwinski*, Montana First Judicial District, Lewis and Clark County, BDC-2003-14 (2004 Mont. Dist. LEXIS 2125). The text of that opinion contains a recitation of the Plaintiff's colloquy. The Plaintiff is a public figure, having had his criminal history thoroughly covered by local press[1] as well as an autobiography[2] rationalizing his abuse of Leah.

[1] A January 19, 2016, Helena Independent Record headline about Appellant states, "Child rapist and polygamist from Helena area hospitalized after stabbing himself. "https://helenair.com/news/crime-and-courts/updated-child-rapist-and-polygamist-from-helena-area-hospitalized-after-stabbing-himself/article_8ba9e31f-9c70-50e2-9156-522238121d35.html

[2] https://www.amazon.com/House-Thomas-Sliwinski/dp/1411630793

STANDARD OF REVIEW

A district court's Mont. R. Civ. P. 12(b)(6) dismissal is reviewed de novo, and a complaint should not be dismissed unless there is no doubt that the plaintiff cannot prove any set of facts that would entitle him to relief. *David L. Murphy Props., LLC v. Painted Rocks Cliff, LLC*, 2025 MT 43, ¶ 7, 421 Mont. 17, 564 P.3d 1277 (internal citations omitted).

ARGUMENT

No potential set of facts gives Appellant a viable cause of action. Leah will make these points below: 1) publications made to the Board of Pardons and Parole are privileged against claims of defamation; 2) re-publications of publications made to the Board of Pardons and Parole are also privileged against claims of defamation; 3) there is no claim for civil conspiracy when a person encourages others to support their privileged publications to the Board of Pardons and Parole; and 4) Appellant's motion to amend his complaint was untimely and futile.

Underlying the Court's consideration of each of these points is the Rule 12(b)(6) standard, and the question whether the district court should have made Leah use Rule 56 procedures instead of Rule 12(b)(6). Leah argues it is inappropriate to make her move for summary judgment in consideration of the inartful pleading of the Appellant's pro se complaint.

No matter what she may be alleged to have said, the fact that it was in connection with Appellant's request for parole renders it privileged.

I. PUBLICATIONS MADE TO THE BOARD OF PARDONS AND PAROLE ARE ABSOLUTELY PRIVILEGED.[3]

Montana law on defamation is stringent and balanced against the Constitutional guaranty of free speech. Defamation consists of either libel or slander. Mont. Code Ann. § 27-1-801 (2023). Libel consists of a publication by writing, picture, or other fixed representation. *Id*. at § 27-1-802. Slander consists of unwritten publications. *Id*. at § 27-1-803. To constitute defamation, a publication must be false, and the plaintiff must prove that the publication was false. *Id*. at §§ 27-1-802, 803; *Gallagher v. Johnson*, 188 Mont. 117, 121, 611 P.2d 613, 615 (1980).

The test for defamation is "stringent." *McConkey v. Flathead Elec. Coop.*, 2005 MT 334, ¶ 45, 330 Mont. 48, 125 P.3d 1121. A publication "must be of such nature that the court can presume as a matter of law that they will tend to disgrace and degrade [the plaintiff] or cause him to be shunned and avoided. It is not sufficient, standing alone, that the language is unpleasant and annoys or irks him, and subjects him to jests or banter,

[3] Leah also argued at the District Court that the alleged publications were opinion statements which are not actionable. *McConkey* at ¶ 49; *Chapman v. Maxwell*, 2014 MT 35, ¶ 15, 374 Mont. 12, 322 P.3d 1029; *Hale v. City of Billings*, 1999 MT 213, ¶ 24, 295 Mont. 495, 986 P.2d 413. Leah does not abandon that argument, but minimizes it on appeal. The real issue here is the forum in which the alleged publications were made, not the substance of the alleged publications.

so as to affect his feelings." *Id*. (citations omitted). "Sarcastic and hyberbolic" publications also are not defamatory. *Id*. (citing *Burr v. Winnett Times Pub. Co.*, 80 Mont. 70, 77, 258 P. 242, 244 (1927).

An alleged defamatory publication must be unprivileged. Mont. Code Ann. §§ 27-1-802, 803. A publication is privileged if made in any official proceeding authorized by law. *Id*. at § 27-1-804(2). This privilege is absolute. *Skinner v. Pistoria*, 194 Mont. 257, 263, 633 P.2d 672, 676 (1981) ("We now hold that subsection (2) also confers an absolute privilege."). Whether the publication was malicious is irrelevant. *Ray v. Connell*, 2016 MT 95, ¶ 19, 383 Mont. 221, 371 P.3d 391. The actions of the Board of Pardons and Parole are official proceedings authorized by Montana Code Annotated § 46-23-101 *et seq.*, and this Court has previously found, in a nonprecedential opinion, that statements in a parole hearing are absolutely privileged under Montana Code Annotated § 27-1-804(2). *Fairservice v. Johnson*, 1998 MT 36N, ¶ 6 ("Here, Johnson's statements were made at a parole hearing and, without regard to whether that hearing was technically a "judicial" proceeding or an "other official proceeding authorized by law," the statements clearly were privileged under the statute.").

Appellant alleged that Leah "wrote the parole board with lies and false witness against Plaintiff." Complaint, p. 4 (Jan 31, 2025, D.C. Doc. 3). Any publications Leah is alleged to have made to the "parole board" are, very clearly, absolutely privileged. Dismissal of those claims was correct.

II. RE-PUBLICATION OF PUBLICATIONS MADE TO THE BOARD OF PARDONS AND PAROLE ARE ABSOLUTELY PRIVILEGED.

If a publication is privileged, it should also be privileged on re-publication in context. Appellant alleges that Leah tried to get others to support her communications to the Board of Pardons and Parole. Notwithstanding the truth of the derogatory publications Leah is alleged to have made against Appellant because we are applying the Rule 12(b)(6) standard here, the fact that Leah is alleged to have republished her statements, online or otherwise, renders those statements similarly privileged.

In the alternative, if republication is found to be outside of the "proceeding" that allows absolute privilege under Montana Code Annotated § 27-1-804(2), the social media publications should be protected by the conditional privilege of Montana Code Annotated § 27-1-804(3). This concept, explained in *Restatement (Second) Torts*, § 596, which explains in comment c that, "The privilege arising out of the rule stated in this Section

is not necessary when the defamatory matter is communicated for the purpose of protecting a sufficiently important interest that the publisher and the recipient have in common." Leah's publications about the reasons Appellant represents a threat to the public are not only in the common interest of her social media audience, but in the public's interest.

III. APPELLANT FAILED TO ALLEGE SUFFICIENT WELL-PLEADED FACTS TO MAKE A CLAIM FOR CIVIL CONSPIRACY.

Appellant did not allege sufficient facts to constitute a claim for civil conspiracy. A civil conspiracy claim involves, "'(1) two or more persons, and for this purpose, a corporation is a person; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful overt acts; and (5) damages as the proximate result thereof.' *Simmons Oil Corp. v. Holly Corp.*, 258 Mont. 79, 91, 852 P.2d 523, 530 (1993) (citation omitted)." *Schumacker v. Meridian Oil Co.*, 1998 MT 79, ¶ 18, 288 Mont. 217, 956 P.2d 1370. A civil conspiracy, on its own, is not actionable. "[I]t is the torts committed or the wrong done in furtherance of a civil conspiracy that…" are actionable. *Id*. (citing *Duffy v. Butte Teachers' Union Number 332, AFL-CIO*, 168 Mont. 246, 251, 541 P.2d 1199, 1202 (1975). Appellant did not allege facts sufficient to constitute the elements of this claim. There is no set of facts that a social

media solicitation can constitute the requisite meeting of minds. No facts as alleged by Appellant can make this claim actionable.

IV. APPELLANT'S REQUESTED AMENDMENT WAS UNTIMELY AND WOULD HAVE BEEN FUTILE.

The Court must consider whether Appellant should have been given a chance to amend his complaint. Leah argues, as the District Court ruled, that amendment would be futile because the alleged defamation was in connection with Appellant's request for parole. *Cf. Moody's Mkt., Inc. v. Mont. State Fund*, 2020 MT 217, ¶ 22, 401 Mont. 168, 471 P.3d 68.

Leah did not see the Appellant's motion for leave to file an amended complaint (D.C. Doc. 20), or know that one had even been filed, until reading Appellant's opening brief on appeal. The motion for leave to amend was untimely, having been filed after the dismissal of Appellant's complaint, and failed to provide specific factual information needed to analyze the request for amendment. Leah never filed a brief in opposition and the District Court did not rule on the motion. Neither of those things are required to analyze the futility of the amendment. As discussed above, because the alleged defamatory publications were related to Appellant's parole proceedings, they are privileged. Amendment of his complaint would be futile.

CONCLUSION

Appellant is trying to continue his abuse of, and control over, Leah, from prison. No more. He cannot silence her, and the Court should not make Leah go through summary judgment procedures to be left alone. Leah's alleged publications were made in conjunction with Appellant's request for parole, therefore Leah's statements are absolutely privileged and the District Court's should be affirmed. It was appropriate to dismiss those claims on Leah's motion to dismiss, because without consideration of their substance, the forum in which they were alleged to have been made, or to which they were connected, gives rise to an absolute privilege.

DATED this 2nd day of September, 2025.

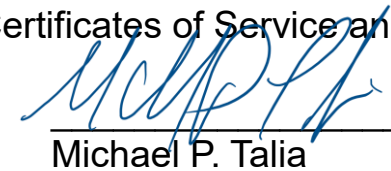
JACKSON, MURDO & GRANT, P.C.

By: 

Michael P. Talia
Attorneys for Appellee

CERTIFICATE OF COMPLIANCE

I certify that this brief is formatted with double line spacing and a proportionately spaced Arial typeface in 14-point font and contains **2,157** words as calculated by my Microsoft Word application (excluding Tables of Contents and Authorities, and Certificates of Service and Compliance).



Michael P. Talia

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing *Appellee's Response Brief* was served via U. S. Mail on the 2nd day of September, 2025, to the following:

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CERTIFICATE OF SERVICE

I, Michael Peter Talia, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 09-02-2025:

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Electronically signed by Emma Allyn Watkins on behalf of Michael Peter Talia
Dated: 09-02-2025