IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 24-0128

MICHAEL A HEBERT,

Plaintiff and Appellant,

v.

SHIELD ARMS, LLC, BRANDON ZEIDER, SETH BERGLEE, ERIC SQUIRES, RAYMOND DEAN BRANDLY, and SHIELD DEVELOPMENT GROUP LLC,

Defendants and Appellees.

APPELLANT'S PETITION FOR REHEARING

On appeal from the Montana Eleventh Judicial District Court

County of Flathead

Cause No. DV-2019-1320

Honorable Amy Eddy Presiding

Appearances:

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Pursuant to Montana Rule of Appellate Procedure 20(1)(a)(i), Appellant Michael Hebert petitions for rehearing from the Court's decision of September 9, 2025. In its decision, the Court overlooked a number of material facts and, cumulatively, that the facts upon which it relied are in dispute, and thus not suitable for reliance either on summary judgment or in a decision upholding the grant of summary judgment.

1. The Court Overlooked Facts Regarding Hebert's Disassociation from SA

As is discussed below, there were many disputed facts in this case. The most egregious of these is found in paragraph 8 of the opinion. The Court stated as fact that "Hebert further claimed to have recruited fellow members of his church to destroy a local abortion and reproductive health clinic." Op. ¶ 6. Hebert's denial of this shocking assertion is consistent and unequivocal, Declaration of Michael Hebert in support of Partial Summary Judgment ¶ 4 (Dkt. 58), more tellingly, the allegation was investigated by the Federal Bureau of Investigation, and found to lack substance. *See id.* & Exh. 1 (redacted summary report at last 9 pages of the exhibit); *see also* Declaration of Michael Hebert in Opposition to Defendants' Motion for Summary Judgment ¶ 3 (Dkt. 70). Under the rules of civil procedure, and decades of precedent from this Court, *see, e.g.,* cases cited in Op. ¶ 16, the appropriate treatment of an assertion like that made by Appellees is that all the evidence is presented to a jury which then reaches a conclusion, under appropriate burdens of proof and persuasion,

about whether or not the asserted events took place. This calumny – which could very likely have real world implications for Hebert and his family -- has no place in a ruling granting summary judgment, or in a published ruling from this Court upholding the grant of summary judgment.

The abortion clinic assertion should certainly be stricken from the opinion, but that is not sufficient. Incendiary as it is, it forms just a part of a web of disputed facts upon which the Court's decision was based.[1]

Paragraphs 9 and 10 include disputed assertions concerning Hebert's communications with outside companies, and the supposed consequences of these communications, stated as fact. Again, Hebert has denied these accounts specifically and unequivocally. For example, while the Court repeats what is clearly multiple hearsay regarding Hebert's conduct at the funeral of the deceased head of New Frontier Armory, Hebert's account of this is completely different. *See* Hebert Decl. Opp. MSJ ¶ 20. Documents produced after Hebert's opposition to summary judgment was filed show conclusively the there was a relationship between Shield Arms and New Frontier months after the memorial service, and that the memorial service was not the cause of any difficulties. Supplemental Declaration of Michael Hebert Opposing Summary Judgment ¶ 6(b) (Dkt. 84). There is no evidence from

[1] Paragraph 8 of the Court's opinion treats other disputed assertions as fact. *See e.g.*, Hebert Decl. Supporting MPSJ at ¶ 11; *see also* Hebert Decl. Opp. MSJ ¶¶ 33, 40, 41.

anyone who was present at the memorial service that contradicts Hebert's account. As noted, it is not for this Court to sort out the truth from the differing accounts: that is the function of the fact finder, at trial. Hebert certainly met his burden with respect to this allegation in opposing summary judgment.

The Court recites as fact that Hebert contacted Zev Technologies, and that this contact led to the cancellation of $2 million in purchase orders. Op. ¶ 10. There were no purchase orders. On the subject of Zev, Hebert offered a detailed contradictory account. Hebert Decl. Opp MSJ ¶ 31. The Court overlooked this account.

With respect to Aero Precision, the Court recites, again as fact, that Hebert reached out to share his allegations about Brandly. Hebert's account shows that it was Aero that shared **its** concerns about Brandly with him. *Id.* ¶ 28. Appellees offered no admissible evidence that contradicts Hebert's account. The Court mentioned Agency Arms in paragraph 10, but overlooked the facts that Hebert did not actually communicate with anyone at the company, and that his communications with that company's counsel were not intended to be shared with the company, and were protected by the attorney client privilege. *Id.* ¶ 30.

In discovery, Appellees did not produce any evidence of any kind that supported either the existence of Hebert's supposed communications, or any of the consequences they allege. No letters, no emails, no texts, no notes or memos regarding negotiations, no draft contracts, no purchase orders, or cancellations. The

record is exactly as it would be if, as Hebert contends, these assertions were made of whole cloth. It is not at all as it would be if Appellees were in the process of putting together multi-million dollar deals.[2] By design, this Court is not equipped to resolve this sort of factual dispute. Like the district court, though, it has chosen to accept at face value various lurid and yet poorly supported allegations Appellees have made. The district court accepted statements that were clearly hearsay, and others that were not even hearsay, just disembodied assertions of fact not in the personal knowledge of the declarant. This Court's acceptance of those same facts is an oversight.

The Court cites the allegations concerning part-time Shield Arms employee Alicia Hauss, Op. ¶¶ 5 & 7, but again several key elements are in dispute. Shield Arms had no policies or protocols that Hebert can be alleged to have violated. The most important point about Ms. Hauss is that whatever she felt or observed, none of it was unlawful. Tellingly, no one, not Ms. Hauss and not Hebert's business partners, said a word to him about her concerns. *See* Hebert Decl. Opp. MSJ ¶ 12. This is more pretext than legitimate workplace issue. Hebert disputed the various allegations of unhinged behavior, *see, e.g.*, Hebert Decl. Opp. MSJ ¶¶ 33, 41, and the FBI, which investigated this same time period, did not find anything concerning. These contradictions, like the others, are for the jury to resolve.

[2] When, on remand, the going concern value of SA is under review, all this business will disappear again.

It is clear and undisputed that Hebert and Brandly, Hebert's business partner (in Shield Development Group) and the principal to a contractor to Shield Arms, had issues with each other. Hebert has provided extensive descriptions of the facts underlying his pre-disassociation position regarding Brandly. *See e.g.*, Hebert Decl. Opp MSJ ¶¶ 7, 8, 21-26, 30. With his reply brief, Brandly offered no response at all to these sworn contentions – it is undisputed that Brandly did not have the appropriate federal firearms license for the work his company was doing,[3] nor is it disputed that Shield Arms had other options -- relying instead on the bare denials of a few of Hebert's contentions in an affidavit prepared years earlier. This Brandly affidavit also includes numerous unsupported (and disputed) allegations of fact about Hebert. There is a critical procedural difference between Hebert and Brandly disagreeing on the facts (to the extent Brandly is even offering evidence that disagrees with Hebert): Brandly and those relying on his statements were parties moving for summary judgment, while Hebert was a party opposing summary judgment. Under very well-established law, the district court, and this Court, was obligated to draw reasonable inferences in Hebert's favor. Neither court is supposed to decide, on summary judgment or an appeal therefrom, which account is more likely. Instead, both courts are to examine the record to see if there are material factual disputes suitable for trial. In this case, there have always been genuine issues of material fact concerning

[3] In connection with the disassociation, the Court stressed the importance of maintaining federal licensure, Op. ¶ 13, but overlooked completely the risks to the company from Brandly's status.

Hebert's and Brandly's conduct. In opposing the motion, Hebert absolutely had no burden to prove by a preponderance of the evidence the truth of his contentions about Brandly. He had only to show that there were issues for trial, and he did so in exactly the same manner as Brandly made the allegations upon which the disassociation was based: statements in a sworn declaration, and claims in a letter that was not delivered to Hebert. And unlike many of Brandly's assertions, Hebert's statements were made on his personal knowledge.

In this connection, paragraph 12 is deeply misleading. As is undisputed, Brandly, a party to this appeal, caused a cease and desist letter to be sent to the counsel who is representing him in this appeal, with whom Hebert had no relationship he knew of at the time, which letter was not timely delivered to Hebert. *See* Hebert Declaration in Support of Partial Summary Judgment ¶ 12 (Dkt. 42); *see also* Hebert Decl. Opp. MSJ ¶ 32. A cease and desist letter that is not delivered to the person whose cessation and desistance is desired is not just a pointless act. It is a positive indication of bad faith.[4] In paragraph 11 of the opinion, the Court recites that Hebert was afraid that his partners were conspiring to ruin him. They were, and

[4] This letter was no small thing. In response to an interrogatory asking for facts and documents supporting the disassociation, Shield Arms specifically highlighted the letter, relegating all other causes to a vague reference to over 600 pages that had been produced in discovery. Hebert Motion for Partial Summary Judgment, Exhibit 2, at 6-7. (Zeider, Berglee and Shield Arms LLC provided identical answers to interrogatory no. 6. Hebert MPSJ Exh. 2.) The only documents in the referenced range that relate to the other supposed causes for the disassociation are post-disassociation statements, made without supporting evidence.

they have. There is nothing unreasonable or unlawful about seeing (and calling out) what is actually happening.

Appellees may argue that each of these facts in dispute is not, standing alone, material. This is not an honest accounting of the situation. The record shows completely divergent accounts of Hebert's conduct over a period of a few short weeks, out of a years long life of the company. The alleged acts can and should be understood to be part of a single whole – an effort to justify a decision that was already made. It is clear, as well, that the Court has completely relied upon the collection of assertions, as a whole, in justifying its conclusion the disassociation was appropriate.

The appropriate remedy for the Court's series of factual oversights is clear. The Court should withdraw its opinion and remand the case to the district court for trial on the merits of whether the factual circumstances support disassociation under the Montana Uniform Limited Liability Company Act, as the Court has interpreted it.

2. The Court Overlooked Facts Related to Hebert's Conversion Claims

Heber provided a detailed description of when and how the various products were invented. *See* Hebert Decl. Opp. MSJ ¶¶ 4-11; Hebert Supp. Decl. Opp MSJ ¶¶ 5,6. The Court, like the district court, simply overlooked all of this evidence,

preferring instead to follow the unsupported assertions from Appellees. This, again, is contrary to Rule 56 and the decades of cases applying it.[5]

Likewise, the Court overlooked Hebert's account of the firearms that SA refused to return to him. The record is clear that SA did not return these firearms; and that its defense is contesting whether Hebert owned them, but Hebert has receipts. Hebert Decl. Opp MSJ ¶ 39 & Exhibit N. The Court detailed the contradictory contentions of the parties concerning who made the list of firearms that were never returned to Hebert in paragraph 46 of the decision, and then, in paragraph 47, chose which of these contentions to believe, because Hebert was unable to prove a negative.[6] This too is an improper application of the summary judgment standard.

With respect to conversion, then, the Court should remand the case to district court for a jury determination concerning what property of Hebert's was returned to him and what was appropriated by SA.

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[5] The consequences of Appellees' appropriation of Hebert's inventions have recently become apparent. After forcing him out, Hebert's partners re-wrote parts of the applications without Hebert's input, but did it so badly that key elements of the patents have been ruled invalid. *Palmetto Armory LLC. V. Shield Arms LLC*, 2025 U.S. Dist, LEXIS 142764 (D.S.C. July 25, 2025). Shield Arms has appealed this ruling to the Federal Circuit.

[6] Of course, SA is required to have kept detailed records regarding these firearms, which, if properly kept, would have resolved the matter conclusively. It refused to produce them in discovery. It will have to produce them on remand, even if this petition is not granted, inasmuch as these items, if they belonged to SA, were part of its value.

3. The Court Overlooked Facts Concerning the SDG Operating Agreement

Finally, the Court overlooked Hebert's showing that the undated SDG operating agreement offered in this case could not have been signed as represented or thus become effective. Not all members of SDG were physically present at the meeting, and never signed a single document. The document presented with all member signatures on a single page is an after-the-fact creation, a composite. *See* Hebert Decl. Opp. MSJ ¶ 14-16. It is no more real than an image showing a photoshopped grizzly on the floor of the Montana legislature: the bear may have been real and the Legislature is real, but image is not. Again, the parties have presented sworn testimony showing irreconcilably contradictory accounts of facts material to the validity of this critical document. These contradictions must be resolved by a jury.

Conclusion

Hebert requests that his petition be granted, the opinion of September 9, 2025 be withdrawn, and the matter remanded for trial.

September 23, 2025

Respectfully submitted,

/s/ Charles H. Carpenter
Attorney for Michael Hebert

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is printed in 14 pt Garamond type, and contains 2,486 words, calculated by Microsoft Word.

Charles H. Carpenter

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Appellants' Brief has been served, on September 23, 2025, using the Court's electronic filing system, on counsel of record in this matter:

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Charles H. Carpenter

CERTIFICATE OF SERVICE

I, Charles H. Carpenter, hereby certify that I have served true and accurate copies of the foregoing Petition - Rehearing to the following on 09-23-2025:

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