

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. DA 25-0331

ROARING LION RANCH, LLC, SAWTOOTH RANCH, LLC, RICHARD R.
KNIGHT, AND SHELLEY KNIGHT

Plaintiffs and Appellants,

v.

YC PROPERTIES, LLC,

Defendant and Appellee.

On Appeal from the Montana Twenty-First Judicial District Court, Ravalli County,
Honorable Howard F. Recht Presiding
Cause No. DV-41-2024-304

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ISSUES PRESENTED

1. Did the district court abuse its discretion by converting Appellee’s Motion to Dismiss under Rule 12(d), M.R.Civ.P., to a Motion for Summary Judgment upon consideration of the Case No. DV-23-273 (“Underlying Case”) record?

2. Did the district court err in granting summary judgment and finding Appellants’ claims of abuse of process and malicious prosecution were legally unworkable because of the Underlying Case the claims were based upon?

STATEMENT OF THE CASE

This appeal challenges the district court’s April 3, 2025, order granting Appellee YC Properties, LLC’s (“Appellee”) Converted Motion for Summary Judgment and dismissing Appellants Roaring Lion Ranch, LLC, Sawtooth Ranch, LLC, Richard Knight, and Shelley Knight’s (collectively “Appellants”) claims for abuse of process and malicious prosecution. The court correctly found that the record of the Underlying Case undisputedly showed: (1) Appellee had probable cause to bring the case to protect its water rights; (2) Appellee did not attempt to coerce Appellants into doing anything they could not be legally required to do; and (3) the Underlying Case did not end in Appellants’ favor. App’x 1–11.

In the Underlying Case, Appellee sought: (1) to enjoin Appellants from diverting water before satisfying Appellee’s senior rights and installing proper

measuring devices under § 85-5-302, MCA; (2) contempt sanctions for ignoring the Water Commissioner; and (3) a temporary restraining order. App’x 209–11. The court later dismissed the case as moot due to the irrigation season ending and found Appellee lacked standing to bring a contempt claim on the Water Commissioner’s behalf. App’x 181–82, 185, 190. The dismissal did not resolve whether Appellants had proper headgates or diverted water illegally but noted Appellee could seek administrative remedies in 2024 if similar issues occurred. App’x 190.

On August 5, 2024, Appellants filed their Complaint alleging abuse of process and malicious prosecution. App’x 146–62. Appellee moved to dismiss under Rule 12(b)(6), arguing the Underlying Case record disproved key elements of Appellants’ claims. App’x 117–45. At the November 4, 2024, hearing, Appellee cited Rule 12(d), M.R.Civ.P. in case the court considered materials beyond the pleadings including the Underlying Case’s record. Nov. 4, 2024, Hearing Tr. at 24:8–19. On December 13, 2024, the court converted the motion to a summary judgment motion. App’x 94–96.

After briefing and oral argument, the court granted summary judgment on April 3, 2025, finding: (1) Appellee filed the Underlying Case because it “had concerns it was not receiving its full water right”; (2) the case was dismissed solely because “the irrigation season had ended and the term of the Water Commissioner

had expired”; and (3) Appellants failed to show Appellee “attempted to wrongfully abuse the process to coerce the [Appellants] to do some collateral thing which they could not be legally compelled to do.” App’x 8, 9, 11.

The ruling is legally sound. Discovery would not alter the undisputed facts: Appellee had probable cause, the case did not end favorably for Appellants, and no abuse of process occurred. This Court should affirm.

STATEMENT OF FACTS

I. Appellee’s Purchase of its Ranch Property Near Hamilton, Montana

In 2018, Appellee purchased a ranch near Hamilton, Montana, which included historic water rights, including co-ownership of the most senior irrigation and stock water rights on Sawtooth Creek. After the purchase, Appellee began modernizing the ranch’s outdated flood irrigation system by installing wheel lines, center pivots, and exploring updated storage and diversion methods, such as piping ditches. These upgrades required approval from the Department of Natural Resources and Conservation (“DNRC”) and Montana Water Court. Appellee also sought water commissioner enforcement to help preserve late-season water availability for itself and other senior rights holders. *See generally*, App’x 43–57; *see* App’x 220–21.

II. The Sawtooth Creek Water Commissioner and the Underlying Case

On July 20, 2023, the district court appointed Ryan Vining as Water Commissioner for Sawtooth Creek. App’x 220–21. Later that month, Appellee’s water rights consultant, Lee Yelin, informed Vining that 4 CFS was not reaching Appellee’s headgate and that junior users needed to be shut off. App’x 213–14. Under the Sawtooth Creek Enforcement Tabulation, Appellee and co-owners of Water Right No. 76H 147802-00 are entitled to call for 4 CFS at the shared headgate. App’x 139.

On August 9, 2023, Vining and Alex Dalgeish, an employee of Yelin’s, hiked up Sawtooth Creek, so Vining could begin shutting the headgates of junior appropriators until the senior Sawtooth Creek water right, Water Right No. 76H 147802-00, was satisfied as measured at the headgate. App’x 214 at ¶ 5. Vining shut the Jacobsen Ditch headgate which serves various appropriators including Appellants Richard and Shelley Knight. App’x 215–16 at ¶ 10.

On August 10, 2023, after the Jacobsen Ditch headgate was closed, Kevin Knight—son of Richard and Shelley Knight—texted former water commissioner Robert Vining, calling him a “piece of sh*t.” App’x 260. The headgate was later reopened by someone. App’x 217. On August 16, Commissioner Vining and Dalgeish returned to Sawtooth Creek to inspect junior diversions. App’x 217 at ¶ 16. Vining again closed the Jacobsen Ditch headgate and found both the Morgan

Ditch headgate—serving Appellant Sawtooth Ranch, LLC—and an undocumented pump diversion near Appellant RLR’s property. App’x 217–18 at ¶¶ 16–18.

The Morgan Ditch headgate was nailed open and inoperable. Vining removed rocks in the creek bed which allowed water to divert into Morgan Ditch given the headgate could not be closed. Vining also removed the undocumented pump diversion from Sawtooth Creek. App’x 217–18 at ¶¶ 17–18. No additional headgates were discovered; however, Vining observed a well-maintained path from the pump and Morgan Ditch headgate leading to Appellant’s RLR’s home. App’x 217–18 at ¶¶ 17-18.

After junior diversions were shut off and the illegal pump removed, the Downing-Vining headgate received more water, but still less than the 4 CFS authorized under Water Right No. 76H 147802-00. App’x 218 at ¶ 19. On August 17, 2023, Appellants Richard and Shelley Knight reopened the Jacobsen Ditch headgate, claiming they were unaware of a water commissioner and denying involvement in the August 10 reopening. App’x 120 at ¶¶ 6, 10. On August 18, 2023, Appellee filed the Underlying Case seeking to enjoin Appellants from illegal water use, including diversion without proper measuring devices and out-of-priority use. App’x 208–209 at ¶¶ 30–36. Appellee also sought a temporary restraining order without notice under § 27-19-316, MCA, which was granted but dissolved on September 21, 2023. App’x 209–210; App’x 181.

On November 3, 2023, Appellant RLR moved to dismiss, arguing Appellee failed to show it was diverting out of priority, as its headgate was not found by Vining. App’x 183–185. The motion did not address the illegal pump or whether RLR had a required measuring device. *Id.* At the 2024 water commissioner appointment hearing, RLR’s counsel admitted it lacked a measuring device, as required under § 85-5-302, MCA. *See generally* Minute Entry, June 12, 2024, Case No. DV-41-1978-0005032, Dkt. 38.10.

On January 3, 2024, the district court ordered briefing on whether any claims remained live after the 2023 irrigation season. App’x 193. On April 19, 2024, the court dismissed Appellee’s Complaint as moot. App’x 180–91.

III. Appellants’ Complaint

On August 5, 2024, Appellants filed a Complaint alleging Appellee’s Underlying Case constituted abuse of process and malicious prosecution. Unlike their mootness briefing, where they denied a close relationship, Appellants now claimed Water Commissioner Vining was Appellee’s agent. Compare App’x 121–23 at ¶¶ 15–17, with App’x 149–53 at ¶¶ 12–25.

For abuse of process, Appellants alleged Appellee’s ulterior motives included: (1) “forcing [Appellants] to install expensive and unnecessary infrastructure as a prerequisite of obtaining their water as well as to force them to refrain from objecting in separate DNRC Proceedings and make concessions about

the entitlement of water[;]” and (2) “to coerce [Appellants] into entering into a settlement and release agreement believed to be for the purpose of preventing [...] [Appellants] from later challenging [Appellee’s] over-claimed amount of water entitlement (4 cfs) in subsequent legal proceedings.” App’x 157.

On malicious prosecution, Appellants alleged: (1) the Underlying Case was filed “with malice” to retaliate for their participation in DNRC proceedings and to block future challenges to Appellee’s 4 CFS claim; (2) it was pursued “without probable cause” that Appellants exceeded their water rights; and (3) the case ended in their favor when it “was dismissed for failure to state an actionable claim and mootness.” App’x 158–160.

IV. Appellee’s Motion to Dismiss

On September 24, 2024, Appellee moved to dismiss, arguing: (1) Appellants were judicially estopped from claiming Vining was Appellee’s agent; (2) the abuse of process claim lacked factual support and could not be cured given the Underlying Case record; and (3) the established facts barred Appellants’ abuse of process and malicious prosecution claims. App’x 117–145. In response, Appellants reiterated their alleged ulterior motive theory: “installation of unnecessary infrastructure, manipulation/withdrawal of participation in separate water proceedings, and forced concessions about entitlement to water.” App’x 106.

At the November 4, 2024, hearing, Appellee clarified its Rule 12(d), M.R.Civ.P., reference was in case the court converted the motion to summary judgment based on the Underlying Case record. Nov. 4, 2025, Hearing Tr. at 24:8–19. Appellants claimed their suit was not about Appellee’s entitlement to 4 CFS or statutory headgate requirements, but rather about Vining’s alleged failure to provide notice before shutting headgates and Appellee’s attempts to block participation in DNRC and other water-related proceedings. *Id.* at 25, 28–31.

V. Conversion to Summary Judgment and Additional Briefing

On December 13, 2024, the district court converted Appellee’s Motion to Dismiss into a Motion for Summary Judgment, notifying the parties it would consider information beyond the Complaint. App’x 94–96. The court gave 20 days for additional briefing, with Appellants filing first and Appellee replying later. *Id.*; *see* Dkt. 13.

Appellant RLR argued the Rule 12(d), M.R.Civ.P., conversion was improper, claiming Appellee presented no evidence outside the Complaint. *Id.* Dkt. 16 at pgs. 1–3. However, RLR ignored Appellee’s references to the Underlying Case record, including Vining’s affidavit and other cited filings. *Id.*

Appellants Sawtooth Ranch, LLC, and the Knights acknowledged the conversion was due to the court considering material “not included in the [Appellants’] pleadings.” App’x 24. They admitted Appellee raised real issues but

claimed the proper process was for “either Ryan Vining to bring any issues to the Court or for YC to file a dissatisfied water user complaint pursuant to MCA § 85-5-301.” App’x 29. They also argued “[t]here was never a complete adjudication of all facts and issues [...]” in the Underlying Case. App’x 32 at ¶ 37 (emphasis added).

In its final reply, Appellee reiterated that the Underlying Case was dismissed as moot, not on the merits, and that it sought only lawful remedies. *See* Dkt. 19. Appellee relied on the Underlying Case record to argue there was no genuine dispute of material fact. *Id.*

VI. The District Court Grants Appellee’s Converted Motion for Summary Judgment

After a final hearing on March 13, 2025, the district court granted Appellee’s Converted Motion for Summary Judgment on April 3, 2025. App’x 1–11. The court found Appellee had probable cause to file the Underlying Case, as it “had concerns it was not receiving its full water right and needed the Court’s authority to protect its rights.” App’x 8. The court clarified that the Underlying Case “was not decided on the merits,” as it was dismissed as moot. App’x 9. Appellants offered no facts to challenge that interpretation. App’x 8–9.

The court also held Appellants failed to show any abuse of process, noting Appellee lawfully sought to protect its water rights under clear statutes within the court’s jurisdiction. App’x 10–11. Claims that Appellee used the court to pressure

Appellants over withdrawn DNRC proceedings were deemed “purely speculative.” App’x 7. The court concluded the case was about Appellee “not receiving their water” and seeking relief under § 85-5-302, MCA, and that Appellants provided only bare allegations and speculation in response. App’x 11.

SUMMARY OF ARGUMENT

Appellants’ claims fail as a matter of law and Appellants presented the district court with no material facts to the contrary, beyond bare allegation and alternate interpretations of the undisputed facts. The elements necessary to establish claims of malicious prosecution and abuse of process are conjunctive; therefore, where Appellants fail to demonstrate a single element for either claim, the claims fail. *Plouffe v. Mont. Dep’t of Pub. Health & Human Servs.*, 2002 MT 64, ¶ 16, 309 Mont. 184, 45 P.3d 10 (citing *Orser v. State*, 178 Mont. 126, 135, 582 P.2d 1227, 1232 (1978)) (hereinafter “*Plouffe I*”); *Judd v. Burlington N. & Santa Fe Ry.*, 2008 MT 181, ¶ 23, 343 Mont. 416, 186 P.3d 214 (citations omitted).

Appellants now allege conversion of Appellee’s Motion to Dismiss into a Motion for Judgment was improper because they were not notified of what additional material the district court considered despite previously recognizing the district court converted to “summary judgment because it considered outside information not included in the [Appellants’] pleadings.” App’x 24. The Court has required conversion to summary judgment where a district court considers the

records of previous, related cases. *Plouffe v. State*, 2003 MT 62, ¶ 14, 314 Mont. 413, 66 P.3d 316 (hereinafter “*Plouffe II*”). Therefore, it was not an abuse of discretion for the district court to convert Appellee’s motion into a Motion for Summary Judgment.

Regarding Appellants’ malicious prosecution claim, Appellants failed to provide any dispute that Appellants fail to demonstrate the element of probable cause or that the Underlying Case ended favorably for Appellants. *See Plouffe I*, ¶ 16 (citations omitted). Instead, Appellants recognize Appellee’s Underlying Case was brought under “the right to call a senior water right” and only speculate that the reason was a pretext. Opening Br. at 16. Appellants continue their speculation and allege the Underlying Case was meant “to intimidate and bully the three selected users who were monitoring [Appellees] expansive water development efforts” and assert “[t]here can be no other credible explanation[.]” *Id.* at 18.

Appellee brought the Underlying Case to enjoin un-measured water use and to protect its most senior water right. Appellants do not dispute that Appellee’s headgate was receiving less than 4 CFS of water when Appellee initiated the Underlying Case. Appellants provide no law or case asserting Appellee cannot call for the totality of its co-owned right or rotate use of the right with other co-owners. “[A]n individual has probable cause to bring civil litigation when they have a reasonable belief in the existence of facts upon which the claim is based, and

reasonably believe that those facts give rise to a valid claim.” *Spoja v. White*, 2014 MT 9, ¶ 13, 373 Mont. 269, 317 P.3d 153. Appellants do not assert that Appellee did not believe it was entitled to call for 4 CFS, only that Appellee is legally incorrect to make the call. Therefore, Appellee possessed probable cause in bringing the Underlying Case and Appellants do not dispute Appellee believed in its claims at the outset, only that there was an ulterior motive to the claims.

Further, Appellants cannot demonstrate that the Underlying Case ended in their favor. “For the termination of the underlying action to be deemed favorable to [Appellants], the termination ‘must reflect on the merits of the underlying action.’” *Plouffe I*, ¶ 34 (quoting *Sacco v. High Country Independent Press*, 271 Mont. 209, 245, 896 P.2d 411, 432 (1995)). Here, the district court clarified its dismissal and stated “the merits of the underlying case were not decided on the merits, as the Court’s Order in DV-23-273 dismissed the case as moot” and “the [c]ourt dismissed the action because the irrigation season had ended and the term of the Water Commissioner had expired.” App’x 9. “Mootness is a threshold issue which must be dealt with before addressing the underlying dispute.” *Shamrock Motors, Inc. v. Ford Motor Co.*, 1999 MT 21, ¶ 17, 293 Mont. 188, 974 P.2d 1150.¹

¹ See also *Plouffe I*, ¶ 37 (where the Court alluded that a plaintiff dismissing his own case due to mootness would not be deemed a favorable conclusion for the defendant).

Here, the district court made it clear that mootness warranted dismissal prior to addressing the underlying dispute or reviewing the merits of the Underlying Case. Appellants do not allege how the Underlying Case’s merits were reviewed and only assert Appellee’s continuation of the Underlying Case meant the district court had to review the merits. Opening Brief, at 37. Appellants present no argument regarding whether mootness is favorable to Appellants. *See id.* at 36–39. Appellants provide no material facts disputing the district court’s interpretation of its previous order and thus fail to establish a necessary element for their malicious prosecution claim.

Lastly, “[a] plaintiff alleging abuse of process must prove a willful use of process not proper in the regular conduct of the proceeding, and that the process was used for an ulterior purpose.” *Spoja*, ¶ 19 (citations omitted). For their abuse of process claim, Appellants “must establish that [Appellee] attempted ‘to use process to coerce the [Appellants] to do some collateral thing which [Appellants] could not be legally and regularly compelled to do.’” *Judd*, ¶ 24 (quoting *Seltzer v. Morton*, 2007 MT 62, ¶ 57, 336 Mont. 225, 154 P.3d 561).

Appellants only focus on the “ulterior purpose” element and point to nowhere in the record where Appellee was coercing Appellants to do something they could not legally be required to do during the Underlying Case outside of the standard process. *See id.* Instead, Appellants speculate the Underlying Case itself

was meant to bully Appellants into submission. “Pressing valid legal claims to their regular conclusion, even with an ulterior motive, does not by itself constitute abuse of process.” *Brault v. Smith*, 209 Mont. 21, 29, 679 P.2d 236, 240 (1984).

Appellants point to no alternative, unauthorized relief sought during the Underlying Case and do not dispute that senior appropriators can enjoin junior appropriators from using out-of-priority water. *See* § 85-2-114(9), MCA.

Therefore, Appellants’ fail to present any facts beyond speculation disputing their inability to demonstrate all elements of their abuse of process claim.

For these reasons, the Court should affirm the district court and conclude:

(1) Appellee’s Motion to Dismiss was properly converted to a Motion for Summary Judgment; (2) as a matter of law, Appellants cannot establish necessary elements for its malicious prosecution claim; and (3) Appellants cannot demonstrate the required elements for its abuse of process claim.

STANDARD OF REVIEW

I. Conversion of Appellees’ Motion to Dismiss to a Motion for Summary Judgment Under Rule 12(d), M.R.Civ.P.

“Whether an asserted claim fails to sufficiently state a claim upon which relief may be granted is a question of law reviewed de novo for correctness under the standards of M. R. Civ. P. 12(b)(6). Whether a district court properly converted, or failed to convert, a motion to dismiss into a motion for summary judgment pursuant to M. R. Civ. P. 12(d) is a discretionary matter reviewed for an

abuse of discretion.” *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 7, 390 Mont. 12, 407 P.3d 692 (citations omitted).

“A district court abuses its discretion when it acts arbitrarily, without the employment of conscientious judgment, or when it exceeds the bounds of reason resulting in substantial injustice.” *Cnty. Ass’n for N. Shore Conservation, Inc. v. Flathead Cty.*, 2019 MT 147, ¶ 45, 396 Mont. 194, 445 P.3d 1195 (citations omitted).

II. Granting Appellee’s Converted Motion for Summary Judgment

This Court “review[s] de novo a district court's grant or denial of summary judgment, applying the same criteria of M. R. Civ. P. 56 as a district court.”

Pilgeram v. GreenPoint Mortg. Funding, Inc., 2013 MT 354, ¶ 9, 373 Mont. 1, 313 P.3d 839 (citations omitted).

“[S]ummary judgment is only appropriate when ‘the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.’ If the movant establishes no material factual dispute and entitlement to judgment as a matter of law, the burden then shifts to the non-movant ‘to prove, by more than mere denial and speculation, that a genuine issue of material fact does exist.’” *McAtee v. Morrison & Frampton, PLLP*, 2021 MT 227, ¶ 11, 405 Mont. 269, 512 P.3d 235 (quoting Rule 56(c)(3), M.R.Civ.P.).

The “opposing party’s facts must be material and of a substantial nature, and not fanciful, frivolous, or conjectural.” *Rosenthal v. Cnty. of Madison*, 2007 MT 277, ¶ 22, 339 Mont. 419, 170 P.3d 493. Further, “mere disagreement about the interpretation of a fact or facts does not amount to genuine issues of material fact.” *Gliko v. Permann*, 2006 MT 30, ¶ 25, 331 Mont. 112, 130 P.3d 155. “[T]he party opposing summary judgment ‘must set forth specific facts and cannot rely on speculative, fanciful, or conclusory statements.’” *Sprunk v. First Bank Sys.*, 252 Mont. 463, 466, 830 P.2d 103, 105 (1992) (quoting *Simmons v. Jenkins*, 230 Mont. 429, 432, 750 P.2d 1067, 1069 (1988)).

APPLICABLE LAW

I. Abuse of Process

The Court has “characterized the occurrence of an abuse of process as a situation where ‘process [is] put to a use perverted beyond its intended purpose.’” *Judd*, ¶ 23 (quoting *Brault*, 209 Mont. at 29, 679 P.2d at 240). There are “two elements [] a plaintiff must prove in order to succeed on an abuse of process claim: (1) an ulterior purpose; and (2) a willful act in the use of the process not proper in the regular course of the proceeding.” *Id.* ¶ 23 (citing *Seltzer*, ¶ 57). “[I]t is not an abuse of process to make a claim ‘for the legitimate purpose of attaining all available recourse’ such as payment of damages.” *Spoja*, ¶ 19 (quoting *Judd*, ¶ 26). Appellants “must establish that [Appellee] attempted ‘to use process to coerce

the [Appellants] to do some collateral thing which [Appellants] could not be legally and regularly compelled to do.” *Judd*, ¶ 24 (quoting *Seltzer*, ¶ 57).

II. Malicious Prosecution

To demonstrate a claim for malicious prosecution, a plaintiff must prove “the six following elements: (1) a judicial proceeding was commenced and prosecuted against the plaintiff; (2) the defendant was responsible for instigating, prosecuting or continuing such proceeding; (3) there was a lack of probable cause for the defendant's acts; (4) the defendant was actuated by malice; (5) the judicial proceeding terminated favorably for plaintiff; and (6) the plaintiff suffered damage.” *Plouffe I*, ¶ 16 (citations omitted). “If one of these elements is not proven by prima facie evidence, judgment as a matter of law may be entered for the defendant.” *Id.* (citing *Orser v. State*, 178 Mont. 126, 135, 582 P.2d 1227, 1232 (1978)).

Because “an action for malicious prosecution runs counter to important legal and social policies, such as encouraging criminal proceedings against those who appear guilty of a crime [or, in this case, encouraging senior appropriators to protect their water rights and prevent illegal water use], it is not favored by the law and the burden on the plaintiff is heavy.” *Reece v. Pierce Flooring*, 194 Mont. 91, 97, 634 P.2d 640, 643 (1981) (citations omitted).

ARGUMENT

I. Appellants failed to dispute the material facts provided by Appellee and instead relied on an alternative interpretation of the undisputed facts to try and support the adequacy of their claims.

Appellee—through the undisputed affidavits, evidence, and other documents in the Underlying Case—demonstrated Appellants’ claims are defective on their face. Appellee showed it is undisputed that, prior to and during the Underlying Case:

1. The actions of Water Commissioner Vining—underlying much of Appellants’ Complaint—were not the actions of an agent or employee of Appellees. *Compare* App’x 121–23 at ¶¶ 15–17, *with* App’x 149– 53 at ¶¶ 12–25.²

2. Appellee reasonably believed (and still believes) it may call for 4 CFS at the Downing-Vining headgate so long as the water is put to a beneficial use within the places of use decreed for the water right and additional flow is not being taken by the co-owners. *See* App. 139.

3. The Downing-Vining headgate was not receiving 4 CFS prior to when Water Commissioner Vining began closing junior diversions and when Appellee filed the Underlying Case. App’x 243.

² “YC has offered plenty of information that Mr. Vining was working with YC to advance its objective in closing upstream junior appropriator’s diversion, but this **does not rise to the level of employment or any relationship sufficient to justify assertion of its claims on Vining’s behalf.**” App’x 121–22 (emphasis added).

4. A well-maintained path led from Appellant RLR's dwelling to an area where illegal diversions of water (a pump without any water right, a screwed open headgate without a measuring device, and another open headgate without a measuring device) were occurring prompting a reasonable belief that Appellant RLR may be diverting water illegally and to the detriment of Appellee. App'x 218 at ¶ 18.

5. The illegal diversions mentioned-above included a screwed-open headgate used by Appellant Sawtooth Ranch, LLC, thus warranting the reasonable belief that it was taking water illegally and could also be the owner of the illegal pump diversion near the screwed open headgate. App'x 217–18 at ¶¶ 16–18.

6. Prior to the filing of the underlying case and following the commissioner's closure of the Jacobsen Ditch headgate, Water Commissioner Vining's father (Robert Vining) received an unprompted text from Kevin Knight (son of Appellants Richard and Shelley Knight) saying "Your [sic] a piece of Sh*t Bob!" App'x 217, 260. Shortly after that message was sent, the Jacobsen Ditch headgate was reopened. App'x 217. Thus, Appellee reasonably believed that the Knights were reopening the junior headgate while aware it was closed by Water Commissioner Vining and should be included in the Underlying Case. *Id.*

7. The Underlying Case was dismissed due to the mootness created by the end of the 2023 irrigation season and Water Commissioner Vining's term as

commissioner. App’x 11. The Underlying Case did not reflect on the merits of Appellee’s claims of illegal water use or crop damages and was not dismissed under Rule 12(b)(6), M.R.Civ.P. as proffered in Appellant RLR’s Motion to Dismiss. *Id.*

Appellants did not present evidence to the district court that disputed these material facts in defense of their claims of abuse of process and malicious prosecution. Instead, Appellants rely on bare allegation, speculation, and disagreement on the interpretation of the undisputed facts to assert summary judgment was improper. Appellants speculate malicious and ulterior motives created Appellee’s Underlying Case. Specifically, that Appellee pursued the Underlying Case “because it wanted the lawsuit and restraining order, wanted all the water for the critical late season, and wanted to intimidate and bully the three selected users who were monitoring its expansive water development efforts.” Opening Br. at 17–18. Appellants provide no evidence of these motives only to state that “[t]here can be no other credible explanation[.]” Opening Br. at 18.

The conspiracy speculated by Appellants does not create a dispute of material fact nor demonstrate that Appellee did not show that Appellants cannot prove every element of each of their claims given the undisputed evidence in the Underlying Case. “[T]he party opposing summary judgment must set forth specific

facts and cannot rely on speculative, fanciful, or conclusory statements.” *Sprunk*, 252 Mont. at 466, 830 P.2d at 105 (quotations omitted).

Like the plaintiff in *Sprunk*, Appellees “recite[] facts with [their] own interpretations and conclusions that only carry the title of disputed issues of material fact, but do not amount to such.” 252 Mont. at 466, 830 P.2d at 105. For example, like the plaintiff in *Sprunk*, Appellants “assert[] that [Water Commissioner Vining] was the agent or alter-ego of [Appellee] [...] [and] [Appellee] does not dispute the [Vining’s] dealings with [Appellee] but asserts that such dealings do not amount to agency or alter-ego[.]” *Id.* The Court in *Sprunk* determined the factual dealings were not in dispute and *Sprunk*’s allegations were no more than mere conclusory statements thus summary judgment was warranted. *Id.*

Like in *Sprunk*, here the Court should affirm the district court’s grant of summary judgment as the facts are not in dispute and Appellants only submit their rendition of the facts with their own interpretations to try and create the required dispute. *See id.*

II. The district court properly converted Appellees’ Motion to Dismiss to a Motion for Summary Judgment pursuant to Rule 12(d), M.R.Civ.P.

Appellee’s Motion to Dismiss presented the district court with various citations to the briefs, documents, and pleadings from the Underlying Case. *See* App’x 119–123 at ¶¶ 2–19. Where the district court determined these citations

sought to have the district court review materials, Appellee’s Motion to Dismiss provided citations to Rule 12(d), M.R.Civ.P., and to the standard of review for summary judgment. App’x 124–25.

At the November 4, 2024, oral argument for Appellee’s Motion to Dismiss, counsel for Appellee noted that Rule 12(d), M.R.Civ.P. was referenced in case the district court determined consideration of the Underlying Case’s record constituted inclusion of materials outside of Appellants’ Complaint. “Whether a district court properly converted, or failed to convert, a motion to dismiss into a motion for summary judgment pursuant to M. R. Civ. P. 12(d) is a discretionary matter reviewed for an abuse of discretion.” *Anderson*, ¶ 7 (citations omitted). The district court did not abuse its discretion by converting Appellee’s Motion to Dismiss and Appellant was well-aware of the consideration of the Underlying Case’s record throughout briefing and oral arguments.

A. Appellee’s Motion to Dismiss was properly converted to a Motion for Summary Judgment under Rule 12(d), M.R.Civ.P. when the district court considered the record of the Underlying Case.

The district court properly converted Appellee’s Motion to Dismiss to a Motion for Summary Judgment. Under Rule 12(d), M.R.Civ.P., “[w]here a district court considers any outside information not included in the plaintiff’s pleadings the court must convert a motion to dismiss to a motion for summary judgment and provide proper notice.” *Farmers Coop. Ass’n v. Amsden*, 2007 MT 287, ¶ 18, 339

Mont. 452, 171 P.3d 684 (citing *Plouffe II*, ¶¶ 14–15). “The policy behind converting a motion to dismiss into a motion for summary judgment when a court considers outside information, is to notify the parties of the additional evidence considered, allow ample opportunity for the parties to prepare information countering the additional evidence, and avoid surprise.” *Id.* ¶ 23 (citing *Plouffe II*, ¶ 15).

In *Plouffe II*, the Court determined consideration of exhibits from “several prior causes of action brought by Plouffe[,]” all of which were previously adjudicated, warranted conversion to a Motion for Summary Judgment. *Plouffe II*, ¶¶ 5, 15. In *Amsden*, the Court concluded that district court’s consideration of the records of “two *ongoing* cases” did not warrant conversion to a Motion for Summary Judgment. ¶ 22 (emphasis in original). Specifically, the Court found that the information considered “**was not about prior adjudicated cases**, but rather about the procedural posture of the two cases currently pending before the court.” *Id.* (emphasis added).

Appellants assert the district court incorrectly converted Appellee’s motion as it did not consider matters outside Plaintiff’s Complaint. Appellants rely on the Court’s decision in *Lozeau v. GEICO Indem. Co.* and *Amsden*, to assert the district court’s reference and use of the record in the Underlying Case did “not necessitate a prejudicial conversion to summary judgment proceedings.” 2009 MT 136, ¶ 11,

350 Mont. 320, 207 P.3d 316; Opening Br. at 24. Appellants misconstrue the Court’s rulings in *Amsden* and *Lozeau*. Both *Amsden* and *Lozeau* determined that the consideration of “*ongoing*” cases referenced by all parties involved did not necessitate conversion under Rule 12(d), M.R.Civ.P., because the parties could not argue surprise or lack of notice. *Amsden*, ¶ 22 (emphasis in original); *Lozeau*, ¶¶ 5, 12. Neither case found a district court could not convert a Motion to Dismiss when considering related, ongoing cases. *Id.*

The Court, in examining a district court that considered previously adjudicated actions, required conversion under Rule 12(d), M.R.Civ.P. *See Plouffe II*, ¶ 22. In *Plouffe II*, the Court determined a district court’s consideration of “pleadings from other proceedings, court decisions and records of administrative proceedings, and [comparison of] them to the allegations and parties in” the underlying action necessitated conversion under Rule 12(d), M.R.Civ.P. ¶ 14.

Similarly, here, all parties and the district court cited and discussed the previous pleadings and court’s decisions from the Underlying Case prior to the district court’s conversion order. *See App’x 117–136, see also Appellant’s Rsp. Br.*, at 5–7, Oct. 8, 2024, Dkt. 6. The district court did not abuse its discretion in considering that cited information after converting Appellee’s motion and its conversion decision aligns closely with the holding in *Plouffe II*. ¶¶ 5, 15. Therefore, the district court employed conscientious judgment and reason to

determine inclusion of materials from the Underlying Case warranted conversion under Rule 12(d), M.R.Civ.P., and its decision should not be disturbed.

B. Appellants fail to establish any prejudice or surprise resulting from the district court's conversion to summary judgment.

The district court: (1) properly notified the parties of its conversion of Appellee's Motion to Dismiss; (2) gave the parties ample opportunity to argue and brief their positions following conversion; and (3) only considered materials from the Underlying Case of which Appellants had the ability to address throughout briefing. Therefore, Appellants cannot argue they were not afforded an opportunity to address Appellee's or the district court's reliance and use of the record of the Underlying Case.

The record of this case demonstrates that all parties relied on, cited to, and referenced a variety of documents from the Underlying Case. Appellants' Complaint references briefing and other documents from the Underlying Case without specific citation. *See* App'x 149–54. Appellee's motion to dismiss makes specific citation to documents from the Underlying Case the district court already had in its possession including the attachments to Appellee's Complaint and other briefing from the case. App'x 117–136. Appellant's response to Appellee's Motion to Dismiss makes direct citation to specific documents in the Underlying Case. Appellant's Rsp. Br., at 5–7, Oct. 8, 2024, Dkt. 6.

Then, following conversion of Appellee's Motion to Dismiss, the parties stipulated that Appellants would file a response to Appellee's Converted Motion for Summary Judgment (i.e., the original motion to dismiss citing the Underlying Case's record) and then Appellee would file a final reply brief in support of the converted motion. *Supra*, Feb. 6, 2025, Dkt. 19. Appellee's February 6, 2025, reply, provided no additional materials outside of the previously cited documents from the Underlying Case. *Id.* Appellants had every opportunity to respond to that information in both the additional briefing and at the March 25, 2025, oral argument. In fact, at the March 25, 2025, oral argument, counsel for Appellant RLR conceded the facts of the previous case were controlling and stated:

2 THE COURT: So I was asking about if the
3 prior record controls, and you are saying partially, but
4 you are not entirely agreeing?
5 MR. LOFING: Yes. The second part of that
6 where I would say it's kind of a qualified agree or
7 maybe I would say a disagree, although I don't like to
8 disagree with the Court, is that you asked specifically
9 about its -- you have this prior court record and then
10 you have two different interpretations of what happened
11 here, and I would say the second part of this answer is
12 to say, yeah, we are interpreting what happened here
13 very differently, and many of those go directly to how
14 there's a disputed fact as to what happened here, making
15 summary judgment improper.

March 25, 2025, Hearing Tr. at 14–15. Therefore, Appellants cannot now argue surprise as they recognized Appellee’s argument was based on the record of the Underlying Case and they argued an alternative interpretation of what occurred in the Underlying Case. *Id.*

“[I]t is error for a district court to convert a motion to dismiss to a motion for summary judgment without providing the parties with notice of its intention to do so” as “[n]otice allows the parties a ‘reasonable opportunity to present all material made pertinent to the motion and avoid surprise.’” *Amsden*, ¶ 18 (quoting *Plouffe II*, ¶ 15). Here, Appellants demonstrate they had notice of the inclusion of the Underlying Action’s record where Appellants recognized Appellee’s arguments were based upon that record and responded with alternative interpretations of that record.

In *Amsden*, where all parties were aware of the information to be discussed at hearing, the Court determined the parties “were not surprised by the [ongoing case] information and there was no need for further time to consider the issues presented.” *Id.* ¶ 23. Like the counsel in *Amsden*, the counsel for all parties here participated in the Underlying Action and were aware of the contents of all briefing and present for all arguments in both matters. *Id.* (“all counsel were present at the hearing and aware of the hearing’s scope and the contents of all motions filed. Therefore, [a party] cannot claim “surprise”).

All parties based their arguments upon the documents and record of the Underlying Case. Appellants do not identify that the district court relied on surprise evidence when reaching its decision. Instead, Appellants argue the district court did not need to convert Appellee's Motion to Dismiss as the district court's knowledge of the Underlying Action "does not necessitate a prejudicial conversion to summary judgment proceedings." Opening Br., at 24. Therefore, the Court should not disturb the district court's conversion and find that Appellants received adequate notice that the Underlying Case's record would be considered on summary judgment.

III. The undisputed facts of the Underlying Case show Appellants are unable to demonstrate the Underlying Case was brought under an ulterior motive to coerce Appellants into doing something they could not be legally required to do.

Appellants point to no acts of coercion or perversion of process in the Underlying Case. Appellants merely disagree with why the Underlying Case was filed and allege some ulterior motive exists. "Pressing valid legal claims to their regular conclusion, even with an ulterior motive, does not by itself constitute abuse of process." *Brault*, 209 Mont. at 29, 679 P.2d at 240. Appellees filed valid legal claims to protect its property, enforce its water rights, and seek Appellants install measuring devices at their diversions under § 85-5-302, MCA so a water commissioner could properly administer and record flow under § 85-5-107, MCA. *See App'x 202–263.*

Appellants believe the Underlying Case was filed “for the ulterior purpose of forcing [Appellants] to install expensive and unnecessary infrastructure as a prerequisite of obtaining their water as well as to force them to refrain from objecting in separate DNRC Proceedings and make concessions about the entitlement of water.” App’x 157, ¶ 38. Appellants do not allege what DNRC proceedings it refers to as Appellee had no pending DNRC proceedings when filing the Underlying Case.

There is no dispute surrounding the relevant actions taken by Appellee in the Underlying Case. However, the parties disagree as to the motives for filing the Underlying Case. Appellee relies on the affidavit of Water Commissioner Vining, photos taken prior to filing the Underlying Action, and the statements of Appellants to provide the reasonable beliefs and motives that led to filing the underlying lawsuit. *See* App’x 213–218, 242–260. Appellants do not provide statements demonstrating the alleged ulterior motives. Instead, Appellants rely on: (1) a voicemail from Appellee’s water rights consultant asserting he will become the water commissioner to “regulate” and prevent Appellants from using water illegally; and (2) bare assertions that Appellee meant to use the Underlying case to bully Appellants. Opening Br. at 18–19.

Appellants argument is based upon the same facts as Appellee’s argument (i.e., the record of the Underlying Case) and merely interprets what prompted and

occurred in that case. “[M]ere disagreement about the interpretation of a fact or facts does not amount to genuine issues of material fact.” *Sprunk*, 252 Mont. at 466, 830 P.2d at 105. Appellants support their speculation by coloring the happenings of the Underlying Case as grave, perversions of process without supplying facts outside the Underlying Case’s record demonstrating coercion or threats to make Appellants to do something they could not be legally required to do. *See Judd*, ¶ 24. These happenings include allegedly failing to serve or notify Appellants of the lawsuit and temporary restraining order (“TRO”), seeking installation of adequate measuring devices under § 85-5-302, MCA, and making call for 4 CFS at Appellee’s shared headgate. Opening Br. at 33–36; App’x 211 ¶¶ 1–3.

A. The facts surrounding notice issues of Appellee’s filing of the Underlying Case are not disputed but interpreted differently by Appellants.

Regarding the alleged failure to serve or notify Appellants of the Underlying Case, Appellants assert Appellees did not provide notice of its Complaint to Appellees even though it had readily available address on Appellants’ water rights. Opening Br. at 32–33. Aside from citation to Appellants’ water right abstracts attached to the Underlying Case’s Complaint, Appellants only cite to their Complaint to make the above misrepresentations. First, Appellee’s Complaint and Application for TRO provided necessary certification under § 27-19-315 and

stated: “ [Appellee’s] agents, and the water commissioner have made efforts to notify [Appellants] of [Appellee’s] injuries to no avail as no contact information was found after good faith efforts were made.” App’x 210, at ¶ 41. Appellee did mail its Complaint to Appellants and certified as such when filing the Complaint. App’x 263.

Second, Appellants falsely claim that Appellee failed to use the addresses of record—including the addresses on water rights—to notify Appellants of the lawsuit and TRO application by August 29, 2023. Opening Br. at 33. Following the filing of the Underlying Case, Appellants were mailed copies as shown in the certificate of service. App’x 263. Further, counsel for Appellee outlined all service attempts and contact efforts that occurred prior to August 29, 2023, at the August 29, 2023, TRO Hearing:

18	MR. WHYTE: So we did serve the Defendants
19	via mail, and I know that the Knights have been
20	contacted by Mr. Yelin, and we have attempted to contact
21	Rob Ryan, who owns Roaring Lion Ranch. Left a couple
22	voicemails, but no contact there. And then otherwise
23	the Complaint was sent to Sawtooth Ranch via the address
24	on their water rights.

Aug. 29, 2023, Hearing Tr. at 3:18–24. Appellants rely solely on their Complaint to allege Appellee did not even try to notify Appellants of the Appellee’s Complaint via mail. Appellee’s certificate of service and admissions to the district

court demonstrate Appellee attempted notification by phone and mailed its Complaint to Appellants upon filing including to addresses “publicly registered for their water rights.” Opening Br. at 33.

Appellee’s do not dispute that quickly serving its Complaint on Appellants was difficult. However, bare allegations that Appellee meant to delay notice as long as possible to somehow harm Appellants with a TRO is unsupported by the record of the Underlying Case and a different accounting of the undisputed facts. Appellants cannot assert it was not notified of the Underlying Case and TRO in a timely manner while also arguing that from the day Appellee’s Complaint was filed to when the TRO was dissolved, Appellants obeyed and were subject to the TRO.

B. Adequate headgates and measuring devices are necessary infrastructure and required on any source with a water commissioner.

Appellants assert the collateral act Appellee sought to coerce Appellants into was installation of headgates and measuring devices under § 85-5-302, MCA. Opening Br. at 34. Where the source of Appellants’ water rights is administered by a water commissioner, Appellants can be legally and regularly compelled to install and maintain adequate headgates and measuring devices. *See* § 85-5-302, MCA; *Judd*, ¶ 24. Therefore, seeking relief in the form of requiring measuring devices so

a water commissioner can properly measure flow is supported by statute and does not amount to perversion of process. *Judd*, ¶ 23.

Appellants argue, without citation to law, that appropriators can simply avoid the requirements of § 85-5-302, MCA, by “shut[ting] down in lieu of diversion, once a commissioner has low enough flows to require administration.” Opening Br. at 34. Appellants’ argument relies on the undisputed facts of record and only provides an alternative interpretation of § 85-5-302, MCA, to allege perversion of process to force a collateral act.

Where a water commissioner is appointed at the beginning of the irrigation season, the water commissioner must measure and distribute water in accordance with the applicable decree and keep records of the flows distributed. Secs. 85-5-105, 107 MCA. Here, Appellants believe that administration of a water commissioner in accordance with a decree is only applicable when flows are low and otherwise an appropriator may take water unmeasured regardless of their decreed water rights.

Once appointed (not once flows are low), a water commissioner must keep a record “of the amount of water distributed to each water user and shall file a summary of the record [...] show[ing] in detail the total amount of water distributed to each water user during the month or the season and the cost of distributing the water...” Sec. 85-5-107, MCA. A water commissioner may only

“distribute to the appropriators, from the source or in the area, the water to which they are entitled” thus a commissioner must keep track and record distributions throughout the irrigation season regardless of high flow. Sec. 85-5-101(2), MCA.

Appellants provide no evidence to dispute their lack of measuring devices or un-closable headgate as alleged by Water Commissioner Vining and shown in the photographs attached to Appellee’s Complaint. *See* App’x. 218 at ¶ 19, 242–257. It is just Appellants’ personal beliefs that where a water commissioner administers water, measuring devices or operable headgates (i.e., not nailed open) represent “unnecessary additional infrastructure and monitoring.” Opening Br. at 35; *see* App’x 252. Appellants provide no legal authority prohibiting Appellee’s enforcement of § 85-5-302, MCA.

The provisions of § 85-2-114, MCA, “do not limit a water right owner from seeking relief, including injunctive relief, in district court[.]” *Supra*. Further, “it is not an abuse of process to make a claim ‘for the legitimate purpose of attaining all available recourse’ such as payment of damages.” *Spoja*, ¶ 19 (quoting *Judd*, ¶ 26). Appellees’ Complaint sought injunctive relief in the form of “[a]n order permanently enjoining [Appellants] from use of their water claims on Sawtooth creek until all illegal diversions are removed and measuring devices are installed within their ditches and other diversions.” App’x. 211 at ¶ 2. Appellee’s requested relief does not constitute a threat, perversion of process, or coercion to force some

illegal collateral act. Appellant provides alternative interpretation of Appellee's Complaint does not provide a dispute of material fact or demonstrate an abuse of process.

C. Appellants provide no legal authority prohibiting Appellee from calling for the entire flow of its co-owned water right.

Appellants allege Appellee was well-aware it could not call for 4 CFS but did so anyways to create a reason for the Underlying Case. Appellant argues that because a DNRC change application filed by Appellee described a 2 CFS proportionate share of Water Right No. 76H 147802-00, Appellant could not make a 4 CFS call. Opening Br. at 29, *see* App'x 43–56. Appellant provides no case or statute prohibiting a water right co-owner from sharing the entirety of the water right or prohibiting making a call on behalf of all co-owners.

In fact, case law demonstrates that water share or rotation agreements among co-owners are allowed where such agreements “do not alter the nature of the right[.]” *Elk Grove Dev. Co. v. Four Corners Cty. Water & Sewer Dist.*, 2020 MT 195, ¶ 19, 400 Mont. 515, 469 P.3d 153; *see Est. of Mandich v. French*, 2022 MT 88, ¶ 21, 408 Mont. 296, 509 P.3d 6; *Musselshell River/Roundup Basin*, 1992 Mont. Water LEXIS 9, *17 (where the Court and Water Court recognize the use of rotation agreements in which a co-owner of a water right may use the full extent of the water right on his place of use while the other co-owners do not utilize the water right); *see also Musselshell River/Roundup Basin*, 1992 Mont. Water LEXIS

9, *16-17 (“users may satisfy their rights in rotation or by such other agreements as are satisfactory to the users”).

Where Appellee sought to change water use in accordance with just its portion of the place of use for Water Right No. 76H 147802-00, Appellee used the basic method provided in *Spaeth v. Emmett* as Appellee could not seek a change in the other co-owner’s portions of Water Right No. 76H 147802-00 without their authorization. 142 Mont. 231, 236, 383 P.2d 812, 815 (1963); *see* App’x 43–56. Appellee is well-supported in its position that it may call for 4 CFS under Water Right No. 76H 147802-00 and could even use the entire flow so long as it was used within the places of use authorized under the water right, the other co-owners agreed to the use and did not simultaneously take water, and the water was put to a beneficial use.

Appellants provide no citation to law prohibiting such a call or use and rely solely on Appellee’s calculation of its proportionate share, based on its place of use to suggest ulterior motive. Appellants do not allege the other co-owners opposed Appellee’s call or the use of additional flow if the co-owners were not taking their entire portions. Appellants solely rely on Appellee’s claim that it may call for 4 CFS to assert the Underlying Case meant to prevent Appellants’ challenges in later proceedings where Appellee would claim entitlement to 4 CFS. Appellants’ unsupported allegations are “speculative, fanciful, and conclusory statements”

unable to withstand summary judgment. *Sprunk*, 252 Mont. at 466, 830 P.2d at 105 (quotations omitted).

IV. Appellants can never demonstrate multiple elements necessary to sustain their malicious prosecution claim due to the undisputed facts present in the Underlying Case’s record.

A. The undisputed facts in the Underlying Case demonstrate Appellee had probable cause to bring the Underlying Case.

Appellee possessed undisputed probable cause to bring the Underlying Case.

“[A]n individual has probable cause to bring civil litigation when they have a reasonable belief in the existence of facts upon which the claim is based, and reasonably believe that those facts give rise to a valid claim.” *Spoja*, ¶ 12.

“[W]here the material facts are not in dispute, or when only one reasonable inference can be drawn from the evidence, does the existence of probable cause become an issue of law for the court to resolve.” *McAtee*, ¶ 23 (internal quotations omitted). “An examination of probable cause must consider the facts known to the suing party at the time the lawsuit was filed.” *Spoja*, ¶ 13 (citing *Seltzer*, ¶ 72) Specifically, “[t]he issue is whether, at the time [Appellee] filed the complaint, [Appellee] had a reasonable belief in facts that would cause a reasonable person to file the suit.” *Id.*

The undisputed facts demonstrate that at the time of filing its Complaint, Appellee had a reasonable belief in the facts and claims alleged as: (1) Appellee reasonably believed (and still believes) it could call for 4 CFS to be delivered to its

shared headgate; (2) Appellants were diverting to Appellee’s detriment, against the actions of Water Commissioner Vining, and without measuring devices; (3) Appellee believed it was entitled to the relief requested in its Complaint; (4) either Appellant Sawtooth Ranch, LLC, or RLR was using the illegal pump diversion located next to Sawtooth’s nailed open headgate and RLR’s maintained path; and (5) Appellants Knights, through their son, were reopening the Jacobsen Ditch headgate knowing it was closed by Water Commissioner Vining as shortly following its closure and before it was reopened, Kevin Knight texted Vining’s father that he was “a piece of sh*t[.]” App’x. 203–11, 260.

Appellants argue that the alleged ulterior motives—discussed above in Sections II(A–C)—prevent a finding of probable cause. However, as demonstrated in Sections II(A–C) of this brief, Appellee had reasonable beliefs supporting the Underlying Case, its use of process, and its legal theories. Therefore, only one reasonable inference can be drawn from Appellee’s filing of the Underlying Case and its limited record: Appellee was attempting to protect his water rights from junior appropriators diverting without measuring devices. Appellants provide no reasonable base creating another believable inference.

Like in *Spoja*, Appellants argue—based on no citation to law—that Appellee should have known its claims are invalid however, “attorneys are not required to predict and exhaust every possible counter-argument to a complaint before

deciding to file.” ¶ 13. Appellants offer “no facts known by [Appellee] that would cast [its] reasonableness or cautiousness into dispute” when it filed the Underlying Case. *Id.* ¶ 15. Instead, Appellants provide an alternate interpretation of the facts presented by Appellee to speculate Appellee had ulterior motives to bully and abuse Appellants. Appellee’s Complaint alone demonstrates undisputed probable cause providing a single reasonable inference. Therefore, the district court was correct to determine the probable cause was a question of law to be determined by the district court.

B. The undisputed facts in the Underlying Case demonstrate the Underlying Case did not end favorably for Appellants.

Appellee’s underlying case was dismissed on mootness because of both the end of the 2023 irrigation and Water Commissioner Vinings term. App’x. 3. Because the district court dismissed the Underlying Case on mootness and prior to review of the merits of Appellee’s claims of illegal water use, the Underlying Case did not terminate favorably for Appellants. App’x. 9.

“For the termination of the underlying action to be deemed favorable to the defendant, the termination ‘must reflect on the merits of the underlying action.’” *Plouffe I*, ¶ 34 (quoting *Sacco*, 271 Mont. at 245, 896 P.2d at 432); *see also Vehrs v. Piquette*, 210 Mont. 386, 392, 684 P.2d 476, 479 (1984) (citing Restatement (Second) of Torts, Section 660 (1977)) (“a malicious prosecution action is barred if

it is predicated upon an action that did not conclusively show the innocence of the accused”).

In clarifying its order dismissing the Underlying Case, the district court stated: “There was no favorable adjudication by this Court; the proceedings were not withdrawn by [Appellee]; nor was the action dismissed because [Appellee] failed to prosecute the claim. Instead, the Court dismissed the action because the irrigation season had ended and the term of the Water Commissioner had expired.” App’x 9. Appellants, in arguing favorable termination, do not discuss the mootness determination and allege the district court provided a heightened burden in reaching its determination of non-favorability. *See* Opening Br. at 36–39.

“A matter is moot when, due to an event or happening, the issue has ceased to exist and no longer presents an actual controversy.” *Mt. W. Bank, N.A. v. Cherrad, LLC*, 2013 MT 99, ¶ 30, 369 Mont. 492, 301 P.3d 796. Mootness is a threshold issue which **must be dealt with before addressing the underlying dispute.**” *Shamrock Motors, Inc.*, ¶ 17 (emphasis added); *see also Mt. W. Bank, N.A.*, ¶ 30 (“Mootness is a threshold issue which must be resolved before addressing the substantive merits of a dispute”).

Here, it is undisputed that the district court dismissed the Underlying Case due to mootness. App’x. 9. Given mootness is a threshold issue often addressed prior to the underlying dispute or merits of a case, the record of the underlying

Case clearly establishes the substantive merits of Appellee's claims were not reviewed by the district court. Therefore, the Underlying Case did not terminate favorable for Appellants, and their malicious prosecution claim fails as a matter of law.

Lastly, Appellants cite *O'Fallon v. Farmers Ins. Exch.* to assert the determination of whether the Underlying Case terminated favorably for Appellants is a question for a jury. Opening Br. 39; 260 Mont. 233, 241, 859 P.2d 1008, 1013 (1993). Appellants' conclusion is misguided. The Court in *O'Fallon* determined that because the reasons for plaintiffs own dismissal were unclear, the reasoning could vary depending on the factual reasons for the self-dismissal, thus a jury would be necessary to determine the reasoning behind dismissal. 260 Mont. at 241, 859 P.2d at 1013; App'x 9. Here, Appellee did not withdraw the Underlying Case, the district court dismissed the case as moot. Implicating a jury in a clear question of law would ask a jury to interpret the law relied upon by the district court to make a purely legal determination. There are no facts in dispute regarding dismissal, therefore it is the district court's place to determine the grounds for dismissal in its own order and whether such grounds reviewed the merits.

Here, the district court correctly determined dismissal by mootness, prior to all Appellants answering Appellee's Complaint and discovery, did not demonstrate a reviewal of the merits of Appellee's case. Therefore, the Underlying Case did not

terminate favorably for Appellants and their malicious prosecution claim fails as a matter of law.

CONCLUSION

For these reasons, Appellees ask this Court to affirm the district court's judgment and recognize: (1) Appellee's Motion to Dismiss was properly converted to a Motion for Summary Judgment; (2) Appellant's provide no dispute of material fact and only provide alternate interpretations of the undisputed facts; and (3) Appellants cannot demonstrate various elements necessary to their abuse of process and malicious process claims and thus the claims fail as a matter of law.

DATED this 26th day of September, 2025.

Tappan Law Firm, PLLC

/s/ Connlan W. Whyte

Connlan W. Whyte

Rick C. Tappan

Attorneys for YC Properties, LLC

CERTIFICATE OF COMPLIANCE:

I certify that this Brief is printed with a proportionately spaced Equity typeface of 14 points, is double spaced, and the word count calculated by Microsoft Word is 9,417 including footnotes.

/s/ Connlan W. Whyte

CERTIFICATE OF SERVICE:

I, Connlan W. Whyte, hereby certify that I have served true and accurate copies of the forgoing Appellee's Answer Brief to the following on September 26th, 2025, via eService:

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