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STATE OF MONTANA
Case Number: DA 25-0335

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. 25-0335

LORI COLLINS

Plaintiff/Appellee

v.

WHITEFISH HOUSING AUTHORITY

Defendant/Appellant.

COMBINED REPLY AND ANSWER BRIEF OF APPELLANT

On Appeal from the Montana Eleventh Judicial District Court
County of Flathead, Cause No. DV-15-2023-1277
Before Hon. Amy Eddy

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1. Doc. No. 123 – Pretrial Order – Aug. 9, 2024

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4. Trial Transcript 15-22; 16-25; 17:1-4; 17:13-15; 18:20-25; 233:19-22; 302:17–303:6; 377:8-13; 380:13-25; 381:1-4; 382:4-14; 422-425:21; 567-568; 691:15-24; 704:3-25; 824:14-20;

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INTRODUCTION

This case is straightforward: Collins had the burden to prove that Hawkins made slanderous statements. Yet she produced nothing—no witness, no testimony, no admissible evidence, choosing instead to rely entirely on a single newspaper article, which is classic double hearsay.

Even if the Article is considered part of the record, it is legally insufficient to establish slander. A newspaper report cannot capture the tone, context, emphasis, or the listener's understanding, elements essential to determining whether a statement was defamatory. Slander requires proof that specific words were spoken, published to a third party, and understood as defamatory. The Article provides none of this.

Separately, the Article should never have been admitted in the first place. It is inadmissible hearsay, improperly used as the sole proof that Hawkins made the alleged statements. This error shifted the burden of proof to WHA, effectively requiring it to disprove slander while allowing Collins to treat the Article as affirmative proof statements were made. To be perfectly clear, Collins' slander claim rests entirely on the Article. She offered no other evidence, specifically no firsthand accounts, to support her allegation that Hawkins made the purported statements. The Article is the sole foundation for Collins' defamation claim, and without it, there is literally nothing in the record connecting Hawkins to the alleged

slander. The Article's admission was therefore not only prejudicial but outcome-determinative, as it supplied the only link between Hawkins and the alleged defamatory remarks.

In short, this case collapses under basic evidentiary scrutiny: inadmissible double hearsay, improper burden-shifting, and the absence of any competent evidence render the verdict unsupportable. WHA is therefore entitled to a reversal of the judgment for lack of sufficient evidence, or, in the alternative, a remand for a new trial to ensure the case is decided based on competent, admissible evidence.

ARGUMENT

I. THE COURT ERRED IN DENYING WHA'S MOTION FOR JUDGMENT AS A MATTER OF LAW.

A. Evidentiary Errors that Undermine the Sufficiency of Evidence are Properly Considered Under Rule 50(b).

Collins' asserts evidentiary issues are not properly the subject for a motion for judgment as a matter of law pursuant to Rule 50(b). Collins entire argument rests on the assertion that such motions are confined to "sufficiency of the evidence," and contends the record at the close of trial must be taken as it existed. Collins' argument does not account for evidence erroneously admitted. Collins's rigid reading of Rule 50(b) fails to recognize circumstances where the only evidence supporting the claim is improperly admitted; excluding such evidence would leave the verdict unsupported.

Although Rule 50 concerns the sufficiency of the evidence, if the only evidence supporting the verdict was admitted in error, the sufficiency of the record is tainted. The text of Rule 50 contains no provisions addressing consideration of inadmissible evidence, instead focusing on whether a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue. Mont. R. Civ. P. 50. Consequently, a Rule 50(b) motion inherently requires consideration of whether inadmissible evidence was essential to the verdict. Collins' argument ignores that prejudicial evidentiary errors raise sufficiency issues that intertwine with evidentiary rulings.

B. Collins' Claim Lacks Any Supporting Evidence in the Record.

Collins' assertion that sufficient evidence supports her claim is without merit. (Comb. Appellee's Resp. Br. And Cross-Appellant's Opening Brief (hereinafter "Appellee's Resp.") at pg. 16). She fails to direct this Court to any evidence in the record to substantiate her position, because, other than the Article, Collins presented no proof—no testimony, no independent corroboration—that the alleged remarks were ever made. This failure is fatal. Because there is no testimony from anyone present at the interview between Hawkins and Knowler, the record does not contain admissible evidence beyond speculative hearsay as to what may have been said. Without the Article, Collins' claim collapses entirely. To prevail on her defamation claim based on slander, Collins was required to show

that a statement was communicated by its speaker to a third party who understood both its defamatory meaning and its application to her. *Granger v. Time, Inc*., 174 Mont. 42, 50, 568 P.2d 535, 540 (1977); MPI2d 9.20. Collins failed to meet this requirement.

Even considering the Article as part of the record, the evidence remains insufficient. A newspaper report cannot capture the tone, tenor, or context of an alleged statement. It provides no evidence of defamatory intent, and no indication of how a listener understood the words. The District Court improperly assumed the veracity of the statements Knowler described were truthfully and accurately reported, even though the record does not establish whether the words attributed to Hawkins were in fact ever spoken. Where a claim is based on slander, the Article cannot replace the required direct testimony of someone who actually made or received the alleged statement(s). Without such evidence, the District Court could not reasonably conclude that Hawkins made any defamatory statements and WHA's Motion should have been granted.

Moreover, the District Court improperly shifted the burden of proof to WHA. In its Pretrial Order (Doc. 123), the Court effectively required WHA to disprove slander by calling witnesses, while at trial it treated Collins' Article as affirmative proof of the alleged statements being made. By relieving Collins of her obligation to establish the essential elements of slander and placing that burden on

WHA, the Court committed reversible error. This burden-shifting is made clear by the District Court's ruling in the Pretrial Order:

> Discovery Requests: Similar to the Court's prior ruling on Mr. Hawkins' responses to the Interrogatories, his responses to the Requests for Admission are excluded under the same rationale. If the WHA wants to introduce what questions were asked during the interview (which are not specifically addressed in the Requests for Admission or responses), if is free to do so through some other means.

Doc. 123, pg. 14.

Collins offered no competent evidence of slander. Even if the Article is taken at face value, it provides nothing to support her claim. A slander verdict cannot rest on a reporter's selective retelling, stripped of tone, context, and nuance. Defamatory intent cannot be conjured out of a half-told story; it requires actual testimony from someone who heard the words and understood their meaning. Without this evidence, there is no slander claim to send to the jury. If this Court finds that denial of WHA's motion was error, it need not address the admissibility of the Article.

II. WHA PRESERVED ITS OBJECTION TO THE ARTICLE COLLINS; FAILS TO ARGUE ITS ADMISSIBILITY; ITS ADMISSION WAS NOT HARMLESS AND WHA IS ENTITLED TO A NEW TRIAL.

Collins argues that the District Court's decision must be affirmed because WHA allegedly waived its objection to the Article and it was properly admitted. (Appellee's Resp. at pgs. 16-17). This argument focuses narrowly on a procedural

waiver while ignoring the broader policy consideration that trials should resolve disputes based on their merits.

A. Collins Improperly Shifts the Burden of Proof.

Collins' response perpetuates her pattern of shifting the burden of proof onto WHA, effectively presuming, without any supporting evidence, that she was defamed, and requiring WHA to disprove defamation rather than Collins establishing the elements of her own claim. (Appellee's Resp. at pgs. 17, 22, 34, 35). Without first establishing admissible facts, Collins asked the jury, and now this Court, to presume defamation occurred.

Collins' reliance on WHA's opening and closing statements does not cure her evidentiary deficiencies. WHA told the jury that it was for them to decide whether any statements were made at all (Tr. Tran., 233:19-22), a proper reminder of Collins' burden to establish her slander claim. Collins, in turn, used this point during closing argument to suggest that the jury could resolve the case without Collins proving her claim. (Appellee's Resp. at pg. 18). Indeed, this point merits repetition, as it plainly demonstrates the flawed reasoning underlying Collins' position:

> What they want you to do is to hold me to an absolute standard. They want you to prove the chain of custody that it came out Dwarne's mouth, went into Knowler's ear, went onto Knowler's pad, went into Knowler's computer, came out of the press just like that, that's what they want. The law does not require that.

(Tr. Tran. 824:14-20).

This statement improperly suggests that it was Defendants' obligation to disprove the alleged remarks and misstates Collins' obligation. For a claim based on slander, Collins was required to prove that the alleged defamatory statements were actually spoken by Hawkins, that they were heard and understood by Knowler, and that Knowler comprehended them as referring to Collins. Without proof of those elements, her claim necessarily fails. By framing the evidentiary proof as a demand imposed by Defendants, Plaintiff impermissibly shifted her burden onto the defense, effectively asking the jury to presume publication and defamation absent affirmative proof. This burden shifting is both legally improper and outcome-determinative, as it relieved Plaintiff of her duty to establish the fundamental elements of her claim.

Instruction 2 does not relieve Collins of the requirement to present actual evidence of a defamatory statement; it merely defines the standard of proof once admissible evidence is in the record.

Even if WHA knew of Collins' plan to use the Article, that knowledge does not cure the hearsay problem or shift the burden to WHA. A defendant's awareness that inadmissible evidence will be offered does not transform it into admissible proof, nor does it absolve the plaintiff of the obligation to meet the essential elements of her claim. The District Court's ruling effectively required WHA to

prove a negative—to call witnesses to disprove slander—while relieving Collins of her responsibility to prove her claim with competent evidence. Such burden-shifting is contrary to Montana law and constitutes reversible error.

As the Plaintiff, Collins bore the burden of proof and her sole reliance on hearsay, rather than admissible evidence, cannot fill the evidentiary void.

B. WHA Did Not Waive Its Objection to the Article.

Collins' argues that WHA's failure to object to a pretrial exhibit as hearsay did not allow it to raise a hearsay objection. (Appellee's Resp. at pgs. 19-24). Such an approach undermines the fundamental fairness of trial proceedings. Just as a court would not allow a conviction to stand if based solely on hearsay, the same principle applies here: liability for defamation cannot rest on hearsay alone.

A procedural misstep should not allow prejudicial errors to stand when they undermine the fairness of the proceeding. Courts must prioritize substance over form, ensuring that verdicts are based on reliable evidence rather than technicalities that shield errors from correction. As the Supreme Court explained in *Chambers v. Mississippi,* 410 U.S. 284, 302, 93 S. Ct. 1038, 1049, 35 L. Ed. 2d 297 (1973), rigid adherence to evidentiary technicalities must never override a party's right to a fair trial. Courts must prioritize substance over form, ensuring that justice is served by uncovering the truth rather than by enforcing procedural formalities that do not advance it.

The waiver principle recognized in *Strong v. State*, 183 Mont. 410, 600 P.2d 191, 193 (1979) and similar cases do not apply here. Unlike those cases, where the parties expressly stipulated in a pretrial order to limit objections, Collins made the strategic choice to rely exclusively on the Article as her evidence of slander. WHA timely and properly objected to the admission of the Article at trial on hearsay ground—multiple times—and filed a point brief on the issue. (Tr. Tran. 15-22; 16-25; 17:1-4; 17:13-15; 18:20-25; 302:17–303:6) (Doc.177). WHA's repeated objections should not be brushed aside under the guise of "procedural waiver," particularly where the Article is demonstrably inadmissible evidence.

Collins' reliance on *Workman* is misplaced. (Appellee's Resp. at pg. 19). Montana's rules explicitly contemplate that courts may modify pretrial orders "to prevent manifest injustice." *Workman v. McIntyre Const. Co.*, 190 Mont. 5, 617 P.2d 1281 (1980). It would be the very definition of manifest injustice to admit inadmissible hearsay simply because of a supposed procedural waiver.

This Court has recognized that pretrial procedures should not be manipulated in a way that undercuts fairness. For example, in *Workman*, involving undisclosed exhibits, this Court held that the admission of evidence contrary to the purposes of pretrial discovery constitutes an abuse of discretion. *Workman*, 190 Mont. at 10. That principle applies with even greater force here, where Collins

sought to prove slander through an inadmissible Article rather than through competent testimony.

Likewise, Collins misconstrues Montana law on the waiver of an objection to a trial exhibit. *Crockett v. Billings*, 234 Mont. 87, 97, 761 P.2d 813, 819-20 (1988) and *Swenson v. Buffalo Bldg. Co.*, 194 Mont. 141, 150, 635 P.2d 978, 983 (1981) involve issues related to stipulation of foundation for an exhibit, not inadmissible hearsay. Failing to object to foundation for an exhibit is different from a hearsay issue because foundation pertains to the procedural admissibility of evidence, while hearsay relates to the substantive reliability of the content of the evidence.

It is fundamental that the burden of proof in a slander action rests with the plaintiff, not the defendant. Collins was required to present competent, admissible evidence that WHA made the alleged slanderous statements. Whether or not Collins made it clear that she intended to rely on the Article, WHA had no obligation to call witnesses or present testimony to "disprove" slander. The law does not shift the burden of proof simply because a plaintiff chooses to rely on inadmissible hearsay rather than the testimony of an actual participant or recipient of the alleged statement. Collins' rigid waiver approach ignores the broader context, i.e. *Stevenson v. Felco Indus., Inc*., 2009 MT 299, 352 Mont. 303, 216

P.3d 763, that trial courts cannot use waiver to admit clearly inadmissible evidence; due process and fairness concerns justify reversal of jury verdict.

C. The District Court improperly admitted the Article and Abused its Discretion.

1. The District Court improperly applied Mont. R. Evid. 801(d)(2).

The District Court erred in determining the Article was admissible because the statements Knowler attributed to Hawkins were admissions of party opponent and "does not constitute hearsay under Rule 801(d)(2), and likely subsections a, b, c, or d." (Tr. Tran., 337:14-21). Adoption or belief in the truth of the statements cannot be inferred solely from silence or because WHA did not explicitly deny making the statements; the lack of a denial could flow from litigation strategy, lack of sufficient information, or procedural posture. Moreover, there is evidence the Board did not know about or approve Hawkins' discussion of Collins. (Tr. Tran, 422-425:21; 567-568). Specifically, as Ben Johnson testified in his deposition, which was read into the record by Collins:

> Q. Today does the Whitefish Housing Authority know what statements Dwarne Hawkins said or made to the reporter?
>
> A. No, only what was indicated in the newspaper article.

(Tr. Tran 424:13-17.)

Likewise, Collins' reliance on the "verbal act" doctrine is misplaced and does not apply. The verbal acts doctrine does not override hearsay rules if the

statements are offered to prove Hawkin's made slanderous statement about Collins. (Appellee's Resp. at pgs. 31-32). The doctrine applies only to the fact that a statement exists, for example, confirming that a signature is authentic or that certain words were spoken. It does not apply to establish whether the statements were made and made with a defamatory meaning or intent. *Matter of Est. of Edwards*, 2017 MT 93, ¶ 42, 387 Mont. 274, 285, 393 P.3d 639, 648 (citations omitted).

Here, Collins' claim is not merely that Hawkins spoke, but that he made specific slanderous statements directed at her. To prevail, she was required to prove, through competent evidence, that Hawkins actually uttered the alleged defamatory words and that they were understood by a listener to concern Collins. The Article cannot supply that proof. The verbal act doctrine does not establish the content of statements or their defamatory character; it merely recognizes that words were spoken. Collins, however, presented no admissible testimony from Hawkins, from Knowler, or from any other witness who actually heard the alleged remarks. Without such evidence, her claim cannot stand. Instead of requiring Collins to carry her burden with admissible testimony, the District Court improperly treated the Article itself as reliable proof. By doing so, the Court effectively presumed, without any supporting evidence, that Knowler both heard Hawkins make the alleged remarks and accurately recorded them. On that basis, it erroneously deemed the Article non-

hearsay under Rule 801(d)(2). This was clear error, as it relieved Collins of her obligation to prove publication through competent evidence and allowed a slander finding to rest entirely on an unverified news report.

2. The Article was Presented for the Truth of Hawkins' Allegedly Making Slanderous Statements.

Collins' argument that the Article was not used to prove she was a malfeasant or a bad employee, and therefore not used for the truth of the matter asserted, is entirely misleading. (Appellee's Resp. at pgs. 27–33; 26–27). The critical issue is not whether the Article was introduced to prove Collins' character, but whether it was used as proof that Hawkins in fact made the alleged slanderous statements. That is precisely how Collins relied on it. Her entire claim rests on the Article as her "evidence" that Hawkins spoke the words attributed to him. In that way, the Article was unquestionably offered for the truth of the matter asserted, namely, that Hawkins uttered defamatory statements about Collins.

The cases she cites—*Knowles*, *Kesey, LLC*, and *Momah*—are inapplicable: they involved either firsthand direct testimony to show publication of a slanderous statement; proof of publication; or proof of republication.

Collins' argument that the Article was not introduced for the truth of the matter asserted, but merely to show it was not used to prove her reputation, is nothing more than an effort to confuse and distract from the real issue, her failure to present any direct testimony of slander. Rather than offering competent evidence

that Hawkins ever uttered the alleged statements, Collins relies on the Article as her sole proof. She then compounds this failure by attempting to shift the burden to WHA, contending that because the statements surfaced at trial, WHA could have defended against them. But Montana law is clear: the burden rests entirely on the plaintiff to prove each element of defamation. Collins' effort to reframe the Article's purpose and transfer her evidentiary obligations to WHA only underscores the Article's inadmissibility and the District Court's error in admitting it. Collins reliance on this argument highlights her inability to meet the basic burden of proof required for her claim.

3. The Article was Hearsay within Hearsay and no Exception Applies.

Even if Hawkins' remarks are considered non-hearsay, the article itself contains additional layers of hearsay, namely Knowler's summarization and recounting of his discussion with Hawkins. Collins fails to address this glaringly obvious issue in her response. Instead, Collins' misrepresents *Larez v. City of Los Angeles*, 946 F.2d 630, 642 (9th Cir. 1991). Collins' asserts in *Larez* the Court found the admission of reporter's statements over a hearsay objection a harmless error. (Appellee's Resp. at pg. 29). Not true. The Court stated, "We affirm the denial of the new trial motion as to the six officers, but, because of the erroneous admission of hearsay evidence, [the newspaper articles] which we cannot say was

harmless, we reverse and remand for a new trial as to Gates and the City." *Larez*, 946 F.2d at 633–34.

Larez is directly on point because, like Collins' reliance on the Article, *Larez* involved the admission of newspaper articles quoting a party without the opportunity for cross-examination, which was intertwined with outcome of the verdict. In *Larez*, the appellate court emphasized that newspaper accounts lack guarantees of trustworthiness and that relying on them to prove liability can prejudice a jury. *Id*. at 643-44. Similarly, Collins made a strategic choice to rely solely on Knowler's Article to prove Hawkins made slanderous statements, without calling Knowler to testify. Knowler's Article was not made under oath, was not subject to cross-examination, and was inherently unreliable as hearsay. Its admission by the District Court improperly influenced the jury because they found WHA liable for slander, despite no proof of Hawkins' making statements with a defamatory intent.

The cases Collins cites do not support the proposition that such dual hearsay can be admitted under these circumstances, and thus her reliance *Football League v. Nat'l Football League*, 1986 WL 5803, at *2 (S.D.N.Y. May 16, 1986) and *Shimozono v. May Dep't Stores Co.* (C.D. Cal. Nov. 19, 2002), 2002 U.S. Dist. LEXIS 28478 is misplaced.

Collins does not meaningfully address the hearsay problem posed by Knowler's Article. Instead, she improperly shifts the focus to Hawkins and relies on case law that is inapplicable. For the Article to have been admissible, both levels of hearsay—Knowler's account and Hawkins' alleged statements—would have needed to satisfy a hearsay exception. Even assuming *arguendo* that Hawkins statements were not hearsay under Rule 801(d)(2), the record contains no basis for admitting Knowler's own hearsay.

4. No Exception Applies that Would Permit Admission of the Article.

The residual exception cannot save the Article. As this Court has made clear, residual hearsay exceptions are to be used sparingly and only in exceptional circumstances, not as a back door to admit otherwise inadmissible evidence. *State v. Brown*, 721 P.2d 303, 315 (Mont. 1986). Like the suicide note in *Brown*, the Article here is not a recognized exception, nor is it a "new and unanticipated situation" justifying expansion of hearsay law. The Article contains no sworn testimony, no cross-examination, and no circumstantial guarantees of trustworthiness. Worse still, it embodies double hearsay: Knowler's unsworn retelling of Hawkins' alleged statements. Far from harmless, its admission was prejudicial and outcome-determinative, because Collins relied on it exclusively as her proof of defamation by WHA. Without the Article, there is no evidence of slander.

Contrary to Collins' assertion, (Appellee's Resp. at pg. 35), the "correction" published by the newspaper further demonstrates the potential lack of reliability of the original article; if a correction was later warranted, the entirety of original article's trustworthiness is in question. Finally, the factual scenario here lacks the unique circumstances supporting application of the residual exception present *Dallas Cnty. v. Com. Union Assur. Co*., 286 F.2d 388 (5th Cir. 1961) (Appellee's Resp. at pg. 33). The residual exception to the hearsay rule is based on two main requisites: necessity and trustworthiness. Necessity exists when the refusal to admit a hearsay statement would result in the loss of facts because the person whose assertion is offered is dead or unavailable, or because the assertion is of such nature that evidence of the same value from the same person or other sources could not be expected to be obtained. *Dallas Cnty*., 286 F.2d 388 (5th Cir. 1961). Here, the opposite is true: both Knowler and Hawkins were available to be subpoenaed and testify at trial. Yet Collins deliberately chose not to call either witness, even though her entire claim rested on alleged slander by Hawkins.

5. Admission of the Article was not Harmless, and the District Court Committed Reversible Error.

Collins' claim that admission of the Article was harmless cannot withstand scrutiny. (Appellee's Resp. at pg. 35). The Article was Collins' only piece of evidence. She called no witnesses who heard the alleged slander, and she chose not to subpoena either Hawkins or Knowler, though both were available. By admitting

the Article, the District Court supplied Collins with the sole evidence to support her defamation claim. Without it, her case collapses. That is the definition of prejudice. The Article was central to Collins' claim and repeatedly referenced as pivotal evidence; admitting damaging hearsay could not have been harmless as without the Article, Collins could not prove slander.

Contrary to Collins' argument, WHA's decision not to present certain witnesses or denials cannot retroactively cure the prejudice from erroneous admission of the article, especially when the burden of persuasion was shifted unfairly. Collins' needed to prove her slander claim by showing statements were made by Knowler. She failed.

III. THE COURT COMMITTED ERROR IN NOT REDUCING JUDGMENT TO THE STATUTORY CAP.

The mere existence of an insurance policy with coverage exceeding the cap should not exempt WHA from statutory limitations, particularly when the insurer is actively contesting coverage in a separate action and has declined to pay. Until coverage is definitively established, the cap should apply to avoid creating a judgment that exceeds WHA's legal responsibility or exposes the housing authority to an unrecoverable amount. The suggested post-judgment remedies suggested by Collins are insufficient to protect WHA and create confusion as to execution and satisfaction of the judgment. Judgment should be reduced to the statutory cap.

IV. THE COURT CORRECTLY DENIED COLLINS' MOTION FOR ATTORNEYS' FEES AND WHA'S COUNTERCLAIM WAS NOT MADE IN BAD FAITH.

WHA's counterclaims, although unsuccessful, were not frivolous or in bad faith, but based on colorable legal theories. WHA was acting out of genuine concern for organizational disruption and potential financial impact after an abrupt executive departure. Collins gave her resignation to WHA on Tuesday October 11, 2022, to be effective Friday October 15, 2022. (Tr. Tran. 377:8-13) (Tr. Ex. 18).

Following Collins' resignation, with only four days' notice, WHA acted in good faith to maintain its operations. (Tr. Tran. 691:15-24). To ensure a smooth transition, WHA rehired Collins temporarily at a higher rate so she could train administrative assistant Pamela Meadows on QuickBooks, Section 8 Vouchers, Tenmast, and the HUD Portal. (Tr. Tran. 380:13-25; 381:1-4). Collins held significant leverage in negotiating this temporary return because WHA was effectively caught in a difficult position. (Tr. Tran. 704:3-25). Even after agreeing to this rehiring, Collins did not come into the WHA office or communicate with Board Chairperson Ben Johnson. (Tr. Tran. 382:4-14). WHA's decision to pursue legal action over her abrupt four-day notice was reasonable and in no way constitutes bad faith.

Damage resulted from the abrupt loss of a key executive like Collins do not render WHA's claims frivolous. Because Collins resigned with minimal notice and

failed to transfer her institutional knowledge, WHA was forced to rehire her temporarily at a higher rate to maintain operations. The Housing Authority provides vital services to disadvantaged individuals, and any interruption in workflow has serious consequences. Collins' failure to share her knowledge, coupled with her short resignation period, left WHA in the untenable position of having to rehire her with no leverage in negotiations.

Later admissions do not retroactively establish bad faith or frivolousness as a matter of law; strategic withdrawal or narrowing of claims during litigation is common. The governing standard is not whether WHA ultimately prevailed, but whether no reasonable argument existed; here, at minimum, the issues raised were based on factual issues, justifying the District Court's denial of fees.

CONCLUSION

Collins presented no sufficient evidence that Hawkins made defamatory statements, relying solely on a double-hearsay newspaper article that cannot convey tone, intent, or context. The District Court's admission of this prejudicial evidence, coupled with improper burden-shifting, fatally undermines the verdict. WHA is therefore entitled to a reversal of the judgment for lack of sufficient evidence, or, in the alternative, a remand for a new trial to ensure the case is decided based on competent, admissible evidence.

DATED October 6, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I certify that this Motion is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word, is 4,476 words, excluding certificate of service and certificate of compliance.

DATED October 6, 2025.

/s/ Natalie A. Hammond
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CERTIFICATE OF SERVICE

I, Natalie Anna Hammond, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant Reply and Answer to Cross Appeal to the following on 10-06-2025:

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