

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 – Appellants,

v.

YC PROPERTIES, LLC,

Defendant – Respondent.

REPLY BRIEF OF
APPELLANTS

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

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1. The District Court erred as a matter of law by *sua sponte* converting YC Properties’ motion to dismiss into a motion for summary judgment.

Interpretation of the Civil Rules of Procedure is a question of law, which this Court reviews *de novo* for correctness. *State v. Clark*, 2008 MT 317, ¶ 8, 346 Mont. 80, 193 P.3d 934 (citation omitted). Rule 12(d) provides that: “If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.” (Emphasis added.) Here, no “matters outside the pleadings” were presented by YC Properties, and the Court incorrectly applied the civil rule in converting *sua sponte* YC Properties’ motion to one for summary judgment. In fact, YC Properties has never filed an answer, affidavit(s) supporting its motion to dismiss, or any supporting documentation (outside the court records).

YC Properties’ answer brief asserts that the *sua sponte* conversion was appropriate because of the prior lawsuit, which gave rise to the abuse of process and malicious prosecution claims (the “Underlying Lawsuit”). First, the District Court could have taken judicial notice of the Underlying Lawsuit—to the extent necessary—without converting the motion to summary judgment. *Lozeau v. GEICO Indem. Co.*, 2009 MT 136, ¶ 11, 350 Mont. 320, 207 P.3d 316 (citing

Farmers Coop. Ass'n v. Amsden, 2007 MT 287, 339 Mont. 452, 171 P.3d 684) (appropriate for Court to consider related court proceedings under Rule 12 (b)(6)); see also *Palantir Techs. Inc. v. Abramowitz*, No. 19-cv-06879-BLF, 2021 U.S. Dist. LEXIS 110178, *13 (N.D. Cal. June 11, 2021) (discussing two federal exceptions: the incorporation-by-reference doctrine and judicial notice, permitting consideration of court filings). The district courts – particularly in the context of subsequent tort claims based on prior or underlying litigation – should not find it necessary to jump to summary judgment proceedings merely because the substance of the subsequent tort claims rests on matters within a prior case’s history.

Second, if the District Court here had specific matters outside the pleadings under consideration, the appropriate measure would have been for it, or YC Properties, to identify those matters such that an ample opportunity to respond was allowed. Such did not happen here. YC Properties cites to a brief colloquy in the hearing transcript to argue that the District Court notified that conversion was possible. Ans. Br. 2, Sept. 26, 2025. The brief colloquy provides no additional value, but emphasizes that Appellants opposed conversion, and YC Properties, did not request the conversion nor submit “matters outside the pleadings.” The District Court ordered *sua sponte* that the parties “file additional briefing to address any further factual issues, if any.” App’x 96. Therein lies the prejudicial legal error.

No items were identified as under review, leaving Appellants to speculate as to what “matters outside the pleadings” to address.

To protect their positions, Appellants timely moved for reconsideration of the vague conversion order, moved for additional time to conduct discovery, and filed four supporting affidavits. Appx’ 18-19; *see also* (Dkt. No. 16). The affidavits included substantial supporting documentation to provide the District Court with a verified, admissible factual basis for each of Appellants’ allegations, going to each of the essential elements of the tort claims pleaded. Appx. 12-19, 82-93. In contrast, YC Properties filed another brief. YC Properties, to date, has never filed any verified documentation, affidavits, or other sworn or admissible evidence in support.

The error is not inconsequential and severely prejudices Appellants. First, Appellants did not receive an answer nor have an opportunity to conduct discovery. Second, it prematurely disposes of – with prejudice – their claims and right to seek redress. Typically, a motion to dismiss, if granted, will be without prejudice and with an opportunity to amend the complaint and address any deficiencies. *Del Duca v. Skydancer*, 2025 MT 156, ¶ 18, 423 Mont. 115, 572 P.3d 804 (“When a Rule 12 (b)(6) motion to dismiss is granted, it is often granted without prejudice. On the other hand, motions for summary judgment are granted with prejudice as they are adjudications on the merits. *Meagher*, ¶ 20.”). Here,

because of the Court's *sua sponte* conversion order, summary judgment was granted without an answer, without discovery, without YC Properties ever filing a single affidavit or supporting document, and without any identification of what "matters outside the pleadings" were considered to be dispositive. Principles of the Civil Rules include preventing surprise and promoting trial on the merits, both of which failed by the District Court's incorrect application of Civil Rule of Procedure 12(d)'s conversion mechanism.

Had the District Court addressed YC Properties' motion to dismiss under the appropriate legal standard, Appellants are confident that their pleadings pass legal review. Appellants' complaint is carefully structured to allege multiple and precise factual allegations (not speculation or conclusory legal opinions) supporting its tort claims. Appellants' factual allegations are specific, directed at YC Properties' abusive and improper use of legal mechanisms, and provide a full factual basis for their ultimate allegation of tortious damage caused to Appellants. *See Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 8, 390 Mont. 12, 407 P.3d 692 ("[u]nder Rule 12(b)(6), the court must take all well-pled factual assertions as true and view them in the light most favorable to the claimant, drawing all reasonable inferences in favor of the claim").

Here, Appellants request the Supreme Court reverse the District Court's incorrect application of Rule 12(d) and clarify that knowledge of an underlying

court record in subsequent tort litigation does not mandate prematurely triggering pre-discovery summary judgment proceedings. Appellants further request de novo review of their complaint, verification that sufficient factual allegations support cognizable legal claims, and remand with instructions for YC Properties to answer the complaint and such other proceedings in due course.

2. The District Court erroneously concluded that YC Properties was entitled to summary judgment, as multiple genuine issues of disputed, material facts exist and require pretrial preparations and determination by a jury.

The District Court usurped the jury's role in summarily deciding heavily fact-dependent elements of the two torts involved. "Summary judgment is an extreme remedy which should be granted only when there is no genuine issue as to any material fact [...]." *Safeco Ins. Co. of Am. v. Liss*, 2000 MT 380, ¶ 22, 303 Mont. 519, 16 P.3d 399 (citing Mont. R. Civ. P. 56(c)). YC Properties has the burden of demonstrating a complete absence of any genuine factual issues, with all reasonable inference that might be drawn from Appellants' offered evidence going to Appellant. *Liss*, ¶ 22.

Here, YC Properties filed no pleadings, depositions, discovery, affidavits, or supporting documentation under Rule Civil Procedure 56(e)(1). In contrast, Appellants have filed a detailed complaint together with four supporting affidavits with substantial, verified documentation. The deficiencies present a quizzical case

for summary judgment disposition, which Appellants pointed out to the District Court in their motions to reconsider the conversion order and to allow discovery. (Dkt. 16 at 5.) Nonetheless, the Court concluded that all of Appellants’ sworn testimony, verified documentation, and circumstantial and inferential evidence was “purely speculative” and insufficient to raise a genuine dispute, App’x 7, thus granting YC Properties summary judgment on its pre-answer briefing. This Court’s review is *de novo*. *Fahrnow v. E-5 Oilfield Servs.*, 2025 MT 220, ¶ 8.

A. Appellants presented genuine issues of disputed fact as to probable cause and favorable termination.

The tort of malicious prosecution contains six elements, two of which are relevant to the present review: (1) lack of probable cause (2) favorable termination of the judicial proceeding. *Plouffe v. Mont. Dep’t of Pub. Health & Human Servs.*, 2002 MT 64, ¶ 16, 309 Mont. 184, 45 P.3d 10 (internal citations omitted). YC Properties’ attempts to prop up the District Court’s sweeping conclusion that, because “a water dispute existed,” YC Properties had probable cause to pull any and all legal levers.¹ Such a summary approach lacks analysis and disregards the operative facts of a pattern of abuse outlined in Appellants’ complaint.

¹ The District Court found – in conclusory fashion – that YC Properties had probable cause because “a water rights conflict existed.” App’x 8; *see also* App’x 7 (“it is clear that there were disputes regarding the water usage”), App’x 8 (the “reason YC filed the Underlying Lawsuit was because YC had concerns it was not

i. YC Properties lacked probable cause to sue each of the Appellants.

YC Properties argues under the cover of the alleged water conflict that it had probable cause to use legal processes without limitation. At issue here are the following misused legal processes: the employment of water commissioner, the filing of a lawsuit, the application and obtaining of temporary restraining order (“TRO”), and continuing to press contempt claims without reasonable grounds. Appellants carefully detail the direct and circumstantial facts that demonstrate that YC Properties did not have probable cause throughout a pattern of abusive practices.

Probable cause is defined as “reasonable grounds for suspicion, supported by circumstances reasonably strong in themselves to warrant a reasonably prudent and cautious [person] to believe that the accused is guilty of the offense charged.”

Plouffe, ¶ 18 (citing *Reece v. Pierce Flooring*, 194 Mont. 91, 98, 634 P.2d 640, 643 (citing *Cornner v. Hamilton*, 62 Mont. 239, 243, 204 P. 489, 491 (1922))).

“[P]robable cause is determined under an objective standard on the basis of the facts known to the party initiating the legal action [...]” *Plouffe*, ¶ 18.

Accordingly, the determination of whether probable cause existed “must be

receiving its full water right”), and App’x 8 (“YC had probable cause to file suit in the Underlying Lawsuit due to disputes over its water rights”).

submitted to the jury for resolution when direct and circumstantial evidence related to the defendant's knowledge is susceptible to different conclusions by reasonable persons." *Id.*

a) No probable cause existed to sue Roaring Lion Ranch.

YC Properties lacked probable cause to initiate and prosecute legal action against Roaring Lion Ranch ("RLR"). Minimally, RLR raises genuine issues of disputed fact that preclude summary judgment. First, RLR's only water right on Sawtooth Creek is on the south side of Sawtooth Creek. YC Properties knew this. It attached RLR's water right abstract to its court filing, which unequivocally shows a place of use on the south side of the creek. App'x 229. All of the diversions YC Properties complained of were on the north side of the creek. Even more, YC Properties' own complaint admits it never located RLR's headgate. App'x 206 at ¶ 16; 216-217 at ¶ 13. Nonetheless, and despite an utter lack of a factual basis to do so, YC Properties sued RLR for excessive diversion and obtained a restraining order against RLR.

YC Properties argues only that it reasonably "assumed" that RLR was diverting out of the northside Morgan ditch headgate, despite the known fact that RLR has no irrigable lands on the northside of the creek. App'x 218 at ¶ 18. YC Properties argues that its assumption was reasonable because a "dirt trail" leads uphill from the Morgan Ditch headgate to the residence of RLR. App'x 218 at

¶ 18. The “assumption” that RLR was using a dirt path to access a downstream diversion to divert water on the northside of the creek is pretext and not believable.

In YC Properties’ answer brief, it argues for the first time that an alleged “illegal pump diversion” was proximate to the “dirt trail” leading to RLR’s properties. Specifically, YC Properties argues that water commissioner “Vining observed a well-maintained path from the pump and Morgan Ditch headgate leading to Appellant RLR’s home. App’x 217-18 at ¶¶ 17-18.” This novel argument is belied by YC Properties’ own records. Never before this appeal has YC Properties suggested that the “illegal pump diversion” was suspected to be on behalf of RLR, nor, specifically, that RLR had a path leading to the pump. YC Properties’ records state:

17. During the second investigation, I closed the Jacobsen Ditch headgate for the second time and continued investigating upstream. *See* Photos from Aug. 16, 2023, site visit, attached hereto as Ex. H, at Photo No.’s 13, 14. I later discovered the pump I had removed during the August 9, 2023, site visit back inside Sawtooth Creek upstream of the Jacobsen Ditch headgate, while still on Sawtooth Ranch’s property. *See* Ex. H, at Photo No.’s 11, 12; *see also* Aug. 16, 2023, site visit waypoints, attached hereto as Ex. I. I removed the pump to allow more water to flow downstream to the senior appropriators. *Id.* Sawtooth Ranch’s claims do not allow for diversion via pump. *See* Ex. E.

18. Further upstream and near Roaring Lion Ranch's property but still on Sawtooth Ranch's property I discovered another headgate. See Ex. H, at Photo No.'s 3-5. This headgate is likely the Morgan Ditch headgate described on Sawtooth Ranch's claims. The headgate was nailed open, so I was unable to close the headgate and instead removed stones from the creek to prevent further pooling that allowed diversion from the creek. Although this is likely the Morgan Ditch headgate, I observed an obvious and maintained dirt path that went from the headgate all the way to Roaring Lion Ranch's property and assume Roaring Lion Ranch may be using this headgate as well. *Id.*, at Photo No's 6, 7.

Clearly, Water Commissioner Vining identified the pump “while still on Sawtooth Ranch’s property.” See ¶ 17, above. “Further upstream and near RLR’s property but still on Sawtooth Ranch’s property”, Mr. Vining found the Morgan Ditch headgate with the dirt path leading even further upstream to RLR’s residence site. ¶ 18, above (emphasis added). Quite simply, YC Properties never had probable cause to sue RLR, and it cannot even point to a “dirt path” connecting RLR to the alleged improper diversions.

b) No probable cause existed to sue the Knights.

YC Properties had no probable cause to initiate and prosecute legal action against Richard and Shelly Knight. Minimally, the Knights raise genuine issues of disputed fact that precludes summary judgment. First, the Knights were selectively sued with no other reason than retaliation and intimidation. The Knights are among approximately 20 users on the same Jacobsen ditch system. They share the single headgate diversion off Sawtooth Creek. They have a second diversion

approximately a mile down ditch to irrigate their hay fields. YC Properties' agent and the commissioner shut off all the Jacobsen ditch users without notice. Only the Knights were named in YC Properties' wrongful lawsuit, despite a pure lack of distinction between the Knight's water use and that of all the other Jacobsen users.

YC Properties relies entirely on a vague text message from defendant Knights' son to make the leap that his parents were responsible for reopening the Jacobson Ditch headgate. The text message between these non-parties has no indicia of relationship to the alleged reopening, other than maybe temporal. In short, YC Properties had no more information that the Knights were responsible for reopening the Jacobson Ditch headgate than for any other of the approximately 20 water users thereon.

The Knights, however, had participated in prior DNRC proceedings, objecting to expansive water works development by YC Properties. As a consequence, YC Properties retaliated. YC Properties' water consultant, and admitted agent, said as much in recorded voicemail:

[B]ut your parents and you decided you were going to object and stop the [DNRC} application. So, because I wanted to help your parents out and they asked that we withdraw the application, we withdrew it and they recommended and I concurred that we just get a water commissioner and allocate the water based on priority dates. **I knew that was going to impact you guys a lot more than if you would've just agreed to his change. You didn't agree to his change. You cost him thousands of dollars. [...] so I'm going to become the water commissioner, and I'm going to regulate—**

App’x 155-156 at ¶ 34; App’x 37. YC Properties’ spin on the foregoing – arguing it was proper and non-retaliatory – is a matter for a jury.

Second, Appellants have disputed YC Properties’ call on entitlement to a 4 CFS senior water right, as YC Properties co-owns this water right with two other users and has filed applications with the DNRC acknowledging proportionate entitlement of only approximately 2 CFS. *See* App’x 41; 89-91. At the time of the Underlying Lawsuit, YC Properties was receiving over 2 CFS. *See* App’x 258 (reciting that gage read 3.08 CFS on August 9, 2023 and 2.01 CFS on August 16, 2023). The excessive call for senior water was a pretext for claiming a shortage; YC Properties was not entitled to a call for 4 CFS of water. Even in its answer, YC Properties obfuscates about its excessive call, still claiming full 4 CFS entitlement, but now qualifying it with a “so long as ... the other co-owners agreed to the use and did not simultaneously take water.” Ans. Br. 36. However, the “co-owners” have never joined in the call nor demonstrated any agreement or acquiescence in YC Properties’ claim to call and use their portion of the water. YC Properties cannot make a call on another’s water right, and the Appellants cannot be bullied into acquiescence. The factual allegations of malice, lack of probable cause, and ulterior motives are all properly supported by direct and inferential evidence, necessitating a fact finder.

c) No probable cause existed to sue Sawtooth Ranch.

YC Properties lacked probable cause to initiate and prosecute legal action against Sawtooth Ranch. Minimally, Sawtooth Ranch raises genuine issues of disputed fact that preclude summary judgment. YC Properties sued Sawtooth Ranch, despite the water commissioner's statement that he first "was unable to locate" Sawtooth's headgate, App'x 216 at ¶ 11, did not know who installed the allegedly illegal pump, App'x 217 at ¶ 17, and only later found what he thought "likely" to be Sawtooth's headgate, App'x 218 at ¶ 18. YC Properties cited no additional factual bases to sue Sawtooth Ranch, and the various assumptions do not constitute probable cause for YC Properties. For all the reasons stated relating to the Knights and RLR – including pretextual and selective intimidation and harassment – YC Properties' pattern of abuse of the process demonstrate lack of probable cause.

d) Complete failure of notice to Appellants supports their position that YC Properties was using the legal processes to achieve illegitimate aims.

Throughout the various processes, YC Properties repeatedly and systematically failed to provide notice to Appellants – despite multiple statutory and procedural rules requiring notice. Had YC Properties provided required notice at any one of the appropriate times, Appellants would have easily defended and quickly ended YC Properties' legal chicanery. YC Properties' failures to provide

notice are detailed below at page 18-20, as the failures overlap with the abuse and misuse of the legal process discussed in relation to the abuse of process tort.

Nonetheless, the pattern demonstrates – at least inferentially – that YC Properties lacked probable cause, knew it, and played the legal system just right to lock up all the critical late season water in 2023. Appellants present ample direct and circumstantial evidence – and the related inferences, which are viewed most favorably to the non-movant – to support their allegations of malice, lack of probable cause, and ulterior motive.

ii. The Underlying Lawsuit terminated favorably for Appellants.

The District Court further erred in deciding on summary judgment that the Underlying Lawsuit’s proceedings did not terminate favorably to Appellants. The legal standard is that the termination of the proceeding “reflect on the merits of the underlying action.” *Plouffe*, ¶ 34 (quotes and citation omitted). For example, failure to prosecute within the applicable statute of limitations reflects favorably for the defendant on the merits of the underlying action. *Sacco v. High Country Indep. Press*, 271 Mont. 209, 896 P.2d 411 (1995). Similarly, dismissal for lack of speedy trial reflects on the merits of the underlying action. *Miller v. Watkins*, 200 Mont. 455, ¶ 463, 653 P.2d 126, 130 (1982). Even a voluntary dismissal reflects sufficiently on the merits of the underlying action, Restatement (Second) of Torts §

674, cmt. J. (1977), because there exists the “natural assumption that one does not simply abandon a meritorious action once instituted.” *Sacco*, 896 P.2d at 432.

The District Court erroneously applied a heightened threshold that abrogates Montana caselaw, requiring a “final judgment on the merits” standard. App’x 9. The heightened standard finds no bearing in the precedent or the underlying principles related to this element of the tort. YC Properties cites none. There exists a great irony in YC Properties’ mootness argument on appeal. Throughout the Underlying Lawsuit, YC Properties argued against “mootness.” *See e.g.*, App’x 193-199 (“YC’s claims are not moot and remain justiciable by this Court. Therefore, this Court must order that all YC’s Complaint’s claims continue to go forward in this case”). Only now does YC Properties seek cover under the Court’s reasoning that the end of the irrigation season mooted issues between the parties.

It should be indisputable that YC Properties pressed its lawsuit to a final decision and dismissal by the District Court. The record should control. Foremost, the District Court’s order granted Appellants’ motions to dismiss. *See* App’x 159 at ¶ 48; *see* App’x 191 (“Defendants’ motions are GRANTED, and this matter is DISMISSED”); App’x 182 (“**ORDER**: The Plaintiff’s complaint is Dismissed.”). Additionally, it is worth noting that the District Court dismissed YC Properties’ ancillary and vague claim for crop damages because “there were no facts plead

regarding how YC's crops were damaged or showing how the injury was 'actual or imminent.'" App'x 191.

YC Properties' complaint in the Underlying Lawsuit included four claims: (1) Injunction, (2) Contempt, (3) TRO, and (4) Application for Preliminary Injunction. The first, third, and fourth claims are essentially redundant, and all three were summarily dismissed and rejected (favorably to Appellants), upon notice and initial appearances of the Appellants and within the first 28 days of the lawsuit. YC Properties pressed on with its remaining Count II claim for contempt and its vague assertion of crop loss damages. In other words, YC Properties pressed the parties and the District Court for a final determination. This required the District Court to decide the case, in which it concluded that "YC did not have standing to bring their contempt claim on behalf of the water commissioner, as it does not have any sort of third party standing on behalf of Mr. Vining. Thus, dismissal is appropriate." App'x 190.

YC Properties' full court press of its baseless claims in the Underlying Lawsuit included prosecuting the claims until the District Court reached a final decision and dismissed YC Properties' lawsuit. Certainly, such a final and appealable order "reflects on the merits of the underlying action," *Plouffe*, ¶ 34, and satisfies the "terminates favorably" element of the malicious prosecution tort. If this was a close call, which Appellants posit it is not, then the favorable

termination element presents an issue for the jury. *See O'Fallon v. Farmers Ins. Exch.*, 260 Mont. 233, 241, 859 P.2d 1008, 1013 (1993).

B. Appellants presented genuine issues as to material facts that relate to all the essential elements of their Abuse of Process claim.

The District Court reached a similar conclusory finding in regard to the abuse of process tort, namely that “Plaintiffs have not raised material disputed facts showing YC willfully misused the process in bringing the Underlying Lawsuit.” App’x 10. The tort of abuse of process contains two elements: “(1) an ulterior purpose and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding,” *Seltzer v. Morton*, 2007 MT 62, ¶ 57, 336 Mont. 225, 154 P.3d 561; *see also Judd v. Burlington N. & Santa Fe Ry.*, 2008 MT 181, ¶ 24, 343 Mont. 416, 186 P.3d 214 (quoting *Seltzer v. Morton*, 2007 MT 62, 336 Mont. 225, 154 P.3d 561) (“plaintiff must establish that the defendant attempted ‘to use process to coerce the plaintiff to do some collateral thing which the plaintiff could not be legally and regularly compelled to do.’”).

Appellants allege that YC Properties abused four legal processes: (1) appointment of a water commissioner and related acts under cover of the water commissioner’s authority, (2) filing a lawsuit without probable cause, (3) seeking, obtaining, and continuing pursuit of TROs and injunctive relief without providing

basic notice and due process to Appellants, and (4) pressing forward with contempt claims against Appellants in the name and right of the water commissioner.

Principally, the legal processes were misused for failure of providing statutorily required notices. First, YC Properties petitioned for and obtained appointment of its selected water commissioner. Though this petition and appointment does not strictly require notice to Appellants, basic notice consideration would have served to avoid many, easily anticipated conflicts. Notice was certainly required when YC Properties' agents began altering and shutting down other users' diversion. Mont. Code Ann. § 85-5-302. YC Properties alleges that its agent, Mr. Yelin, made a phone call to the Knights' son, but no one else was contacted. Effectively, YC Properties invited a conflict by shutting down users without notice or petition, appointment, or shutoff, then used the reporting of the diversions to launch its lawsuit.

YC Properties filed the Underlying Lawsuit on August 18, 2023, seeking an ex-parte TRO, injunction, and contempt against the select Appellants. App'x 153 at ¶ 26. YC Properties failed to serve the lawsuit or the ex-parte TRO, despite readily available contact information. App'x 153 at ¶ 27, *supra*. YC Properties did not provide the statutorily required certification that it had attempted to contact the parties before seeking the ex-parte TRO, Montana Code Annotated § 27-19-315, and the allegation in YC Properties' complaint does not serve that statutory

purpose. YC Properties never served the lawsuit under Civil Rule 4, maybe the most elementary notice requirement in the legal profession.

YC Properties claimed that its agents could not locate contact information for RLR and Sawtooth Ranch. App'x 150 at ¶ 17. The contact information is readily available by internet search, Montana Secretary of State search, and in the case of RLR, posted on the main entrance gate to its ranch accessible from a public road and within a few miles of YC Properties' ranch. App'x 150 at ¶ 18. All three of the Appellants could have been served readily, if such had been the intention.

By August 29, 2023, YC Properties had still not served Appellants with the lawsuit nor the TRO. App'x 153 at ¶ 28. Nonetheless, it pursued a show cause hearing on August 29, 2023, seeking the ex-parte TRO be converted to a preliminary injunction. App'x 153 at ¶ 28. Only YC Properties' attorney and its two hired water consultants attended, as no other parties were given notice of the hearing. App'x 201. The Court raised the service issue and continued the hearing for lack of service on the Appellants. App'x 153 at ¶ 28; 201; Tr. Proc., Aug. 29, 2023. YC Properties admitted during the hearing that it had not served the Appellants. *See* Ans. Br. 31 (admitting that it had only made mailings and unreturned phone calls prior to the hearing, except that Mr. Yelin allegedly contacted the Knight's son, though not regarding notice of the hearing.)

Once finally made aware of the proceedings against it, Appellants immediately moved to dismiss and/or dissolve the wrongfully-obtained TRO. App’x 153-154 at ¶ 29. RLR, Sawtooth Ranch, and the Knights were subject to the wrongful TRO for 28 days. Only by systematic failure to provide notice was YC Properties able to take all of the critical late season water from other users.

The second element of the tort of abuse of process is an ulterior motive, which incorporates, in part, the collateral act analysis. YC Properties answers, somewhat incredulously, that Appellants have failed to identify any collateral acts served by YC Properties’ ulterior motives. *See e.g.*, Ans. Br. 13. Appellants expressly pleaded and subsequently supported by admissible prima facie evidence these, as follows: (1) to intimidate and silence Appellants from public participation in the DNRC proceedings i.e. a retribution campaign, (2) to procure all the critical late season water and obtain acquiescence in the call for an excessive 4 CFS, (3) to require installation of expensive and unnecessary diversion infrastructure upgrades, and (4) to use private driveways for monitoring. The prima facie case for these allegations has been discussed throughout.

YC Properties argues that these alleged collateral acts amount to speculative spin on the facts. Again, the record presents direct and circumstantial evidence that requires a fact finder. Appellants do not present “mere disagreement over undisputed facts,” but rather Appellants present a comprehensive case for

malicious prosecution and abuse of process that relies on the record in the Underlying Lawsuit together with contextual facts, voicemails, documentation, sworn testimony and justified suspicion grounded in actual facts and admissions.

Take, for example, YC Properties' argument that it was entitled to sue selectively the three Appellants over deficient diversionary headgates. First, the statute plainly only requires a measuring device if a commissioner is to deliver water. Mont. Code Ann. § 85-5-302. The alternative is to shut down for the season in light of a senior call. For example, RLR's headgate (on south side of creek) was already closed, because its right is so junior.

YC Properties continues to seek cover under the statutory requirement for measuring devices, despite failing to show that such became necessary outside an excessive and pretextual call for 4 CFS. Appellants' headgates are sufficient and do not need expensive upgrades. *Compare* App'x 244 (photo 5, YC Properties headgate), App'x 245 (photo 7, Jacobsen Ditch headgate), App'x 252 (photo 4 from 8/16/2023, Morgan Ditch headgate) *with* App'x 162 (Roaring Lion Ranch's headgate), showing similar condition of all. If it became necessary to administer with a measuring device, then a commissioner would shut the headgates until one was installed. This irrigation system has operated for decades without expensive and unnecessary additional infrastructure and monitoring.

Any dispute as to the veracity and credulity of the malice and ulterior motives alleged and inferred presents a jury question that the District Court should not have prematurely determined on summary judgment.

CONCLUSION

The District Court first incorrectly converted YC Properties' motion to dismiss into summary judgment proceedings without identifying or considering any "matters outside the pleadings." As a matter of rule interpretation and civil procedure, the matter should be reversed and remanded, with instructions that YC Properties answer the complaint in light of the sufficient legal pleading by Appellants. The first error led to a second, and, if reached, the District Court's grant of summary judgment with prejudice must be reversed in light of the abundance of direct, circumstantial, and inferential evidence supporting Appellants' claims, which, at a minimum create genuine issues of material fact entitling Appellants to further proceedings and trial by jury.

DATED this 10th day of October, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 11(4)(e), I certify that this Brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Word for Microsoft 365 MSO is 4,925 words, excluding Certificate of Service and Certificate of Compliance.

/s/ Nicholas J. Lofing

CERTIFICATE OF SERVICE

I, Nicholas J. Lofing, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 10-10-2025:

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