

FILED

10/14/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 25-0719

Pro Se Litigant
Dan Patrick McCaul
3602 Laredo Drive
Bozeman, MT 59718
(406) 490-8677
Email, danmccaul97@gmail.com

Attorney for Plaintiff Dan McCaul

DA25-0719

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OCT 14 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

**IN THE MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT OF THE STATE OF
MONTANA, GALLATIN COUNTY**

<p>DAN PATRICK McCaul, Plaintiff,</p> <p>v.</p> <p>TOBIN CAPP, BEN CARTER, JENNIFER CARTER, VENTURE 1, LLC, CS CONSTRUCTION, BT CONSTRUCTION MT INC., CHRISTINE MACDONALD, JIM NESS, FIRST SECURITY BANK, ABC CORPORATION 1-5, and DOES 1-5, Defendants.</p>	<p>CAUSE NO. DV-2025-879</p> <p>HONORABLE JUDGE JOHN C. BROWN</p> <p>NOTICE OF APPEAL PURSUANT TO RULE 4 AND REQUEST FOR CORRECTION OF ERRORS</p>
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NOTICE OF APPEAL PURSUANT TO RULE 4

Appellant Dan Patrick McCaul hereby gives notice of appeal to the Montana Supreme Court pursuant to Rule 4 of the Montana Rules of Appellate Procedure.

This appeal is taken from the District Court's Order dated September 22, 2025, which dismissed all claims except those for breach of written contract, denied equitable tolling, and failed to address substantial allegations of fraud, concealment, and procedural obstruction.

Appellant further appeals from the plain and prejudicial errors committed by the District Court, including those attributable to His Honor and/or His Honor's staff, which materially affected the outcome and denied Appellant a fair opportunity to present his claims.

Appellant reserves the right to supplement this Notice with a full Statement of Issues and supporting authorities in his appellate briefing.

Respectfully submitted,

Dan Patrick McCaul

IN THE SUPREME COURT OF THE STATE OF MONTANA

Dan Patrick McCaul, Appellant

v.

Tobin Capp's, Ben Carter's, Jennifer Carter's and Venture 1, LLC's Motion to Dismiss,
Appellees

Gallatin County Cause No. DV-16-2025-879-BC

Appeal from the Montana Eighteenth Judicial District Court

Hon. John C. Brown, Presiding

NOTICE OF APPEAL AND STATEMENT OF GROUNDS

Appellant Dan Patrick McCaul, pursuant to Rule 4 of the Montana Rules of Appellate Procedure, respectfully submits this appeal to the Montana Supreme Court based on the following grounds:

I. Procedural Delay and Prejudicial Impact

Appellant respectfully asserts that the District Court's handling of the Keller Williams matter resulted in an extraordinary and unjustified delay of approximately 4.8 years from the initiation of investigation and complaint to meaningful judicial review. This delay:

- Undermined Appellant's ability to preserve evidence and secure timely witness testimony.
- Allowed key defendants and affiliated agents to alter, conceal, or destroy material records.
- Resulted in significant financial, reputational, and emotional harm to Appellant, including displacement and loss of income.

Such delay constitutes a violation of Appellant's right to due process under Article II, Section 17 of the Montana Constitution and the Fourteenth Amendment of the U.S. Constitution.

II. Improper Issuance of Restraining Order

Appellant further challenges the issuance of a restraining order by Judge John C. Brown, which:

- Was entered without a full evidentiary hearing or opportunity for rebuttal.
- Functioned to silence Appellant's lawful whistleblower activity and media engagement.
- Prevented Appellant from pursuing parallel remedies and disclosures, including coordination with investigative journalists and regulatory authorities.

The restraining order served not as a protective measure, but as a procedural weapon to suppress public accountability and shield institutional misconduct.

III. Judicial Error and Abuse of Discretion

Appellant contends that the District Court committed reversible error by:

- Failing to compel discovery from Keller Williams agents and their counsel despite credible allegations of document fabrication and concealment.
- Ignoring prior findings by law enforcement (Detective Nicholas Redburn) and failing to incorporate investigative records into the evidentiary record.
- Allowing defense counsel to represent multiple conflicted parties without inquiry into ethical violations or waiver protocols.

NOTICE OF APPEAL AND STATEMENT OF ISSUES

Appellant Dan Patrick McCaul, pursuant to Rule 4 of the Montana Rules of Appellate Procedure, and respectfully appeals the District Court's September 22, 2025 Order granting Defendants' Rule 12(b)(6) Motion to Dismiss.

Appellant raises the following issues for review:

I. Whether the District Court Erred in Dismissing Claims Based Solely on Statute of Limitations Without Considering Equitable Tolling or Continuing Harm

The District Court dismissed all claims other than breach of written contract based on statutory limitations periods ranging from two to five years.

However, Appellant respectfully asserts:

- The court failed to consider equitable tolling doctrines, including fraudulent concealment and delayed discovery, which are applicable under Montana law.
- The court ignored ongoing harm and continuing violations stemming from Defendants' conduct, including concealment of material records and obstruction of prior investigations.
- The court improperly denied Appellant's request for a hearing, depriving him of the opportunity to present factual context and rebut procedural assumptions.

II. Whether the Court's Refusal to Hear Oral Argument Violated Appellant's Right to Due Process

Appellant requested a hearing on multiple occasions. The District Court denied this request under its "inherent discretion," despite the complexity of the claims and the presence of disputed facts.

These denials:

- Prevented Appellant McCaul from clarifying the factual basis of his claims and responding to Defendants' legal characterizations.
- Contravened the spirit of M. R. Civ. P. 12(b)(6), which requires courts to accept well-pleaded facts as true and avoid premature factual determinations.
- Violated Appellant's right to procedural fairness under Article II, Section 17 of the Montana Constitution.

III. Whether the Prior Restraining Order Issued by Judge John C. Brown in a Related Matter Prejudiced Appellant's Ability to Timely File and Litigate His Claims

Appellant further asserts that the restraining order issued by Judge John C. Brown in the Keller Williams matter:

- Functioned as a prior restraint on speech and legal action, suppressing Appellant's ability to engage with media, investigators, and counsel.
- Contributed to a 4.8-year delay in the production of critical evidence and the filing of related claims.
- Should be considered as a tolling factor or mitigating circumstance in evaluating the timeliness of Appellant's current claims.

IV. The District Court Erred in Its Application of the Discovery Rule and Statutes of Limitation

Appellant respectfully asserts that the District Court's dismissal of all claims other than breach of written contract was based on a flawed and overly rigid interpretation of Montana's discovery rule under § 27-2-102(3), MCA.

While the court acknowledged that limitations periods may begin upon discovery of facts constituting the claim, it failed to properly apply this standard to the unique circumstances of this case. Specifically:

- The court did not account for fraudulent concealment and reverse-engineered documentation produced by Defendants only during 2025 discovery, which materially altered the factual landscape and revealed previously undisclosed misconduct.

- The court ignored the 4.8-year delay in the Keller Williams matter, including the impact of Judge John C. Brown’s restraining order, which functioned as a prior restraint and obstructed Appellant’s ability to investigate, file, and litigate related claims.
- The court failed to consider that Appellant’s damages—including lost rental income and expenses—continued well beyond 2019, with measurable harm accruing monthly through 2025.

Montana precedent makes clear that the discovery rule tolls the limitations period until the plaintiff discovers, or in the exercise of due diligence should have discovered, the facts essential to the cause of action—not merely the legal theories (*Christian v. ARCO*, 2015 MT 255, ¶ 64; *Young v. Datsopoulos*, 249 Mont. 466, 470).

Appellant did not and could not have discovered the full scope of falsified records, misrepresentations, and coordinated concealment until Defendants’ 2025 production.

Moreover, the court’s refusal to grant a hearing deprived Appellant of the opportunity to present evidence supporting equitable tolling, continuing harm, and procedural obstruction. This denial of oral argument—despite multiple requests—constitutes a violation of due process and undermines the integrity of the Rule 12(b)(6) analysis.

V. The District Court Erred in Rejecting the Discovery Rule and Misapplying the Continuing Tort Doctrine

Appellant respectfully asserts that the District Court’s conclusion—that all claims other than breach of written contract were time-barred by July or August 2024—rests on an overly narrow and legally flawed interpretation of Montana’s tolling doctrines.

A. Discovery Rule Was Improperly Denied

Under § 27-2-102(3), MCA, the statute of limitations begins to run when “the facts constituting the claim have been discovered or, in the exercise of due diligence, should have been discovered.” The court failed to account for:

- Fraudulent concealment and reverse-forged documents produced only during 2025 discovery, which materially altered the factual basis of Appellant’s claims.
- The restraining order issued by Judge John C. Brown in the Keller Williams matter, which obstructed Appellant’s ability to investigate and file related claims for nearly five years.
- The fact that Appellant’s reliance on communications from Defendants in 2019 was based on false representations, the full scope of which was not discoverable until Defendants’ own admissions and production in 2025.

Montana precedent makes clear that knowledge of the “full extent” of damages is not required, but neither is premature awareness of incomplete or misleading facts sufficient to trigger the limitations period (*Christian v. ARCO*, 2015 MT 255, ¶ 64; *Young v. Datsopoulos*, 249 Mont. 466, 470).

B. Continuing Tort Doctrine Was Wrongfully Dismissed

The District Court’s rejection of the continuing tort doctrine ignores the nature of Appellant’s damages and the ongoing misconduct. Specifically:

- Appellant alleges monthly lost rental income, reputational harm, and financial instability continuing through 2025.
- Defendants’ concealment of material records and obstruction of prior investigations constitute ongoing wrongful conduct, not a single isolated act.
- Montana courts have recognized that where wrongful conduct persists or its effects are continuous, the statute of limitations may be tolled (*Plouffe v. Montana Dept. of Public Health*, 2003 MT 62, ¶ 18).

The court’s conclusion that all relevant facts were known in 2019 fails to account for the evolving nature of the harm, the delayed production of evidence, and the procedural barriers imposed by prior judicial orders.

VI. The District Court Misconstrued the Scope of the Continuing Tort Doctrine and Its Applicability to Systemic Fraud and Concealment

Appellant respectfully challenges the District Court’s conclusion that the continuing tort doctrine applies only to claims for trespass or nuisance. While *Burley v. BNSF Ry. Co.* and *Christian v. ARCO* involved environmental harms, Montana law does not categorically exclude other forms of ongoing tortious conduct from equitable tolling analysis.

A. The Doctrine Is Not Limited to Trespass or Nuisance When the Harm Is Repetitive and Unresolved

The Montana Supreme Court has emphasized that the doctrine applies where tortious conduct is “continuing,” “temporary,” or “not stabilized” (*Christian*, ¶¶ 18–19). In this case:

- Defendants repeatedly concealed material records, reverse-engineered documents, and obstructed discovery over a multi-year period.
- These acts were not isolated; they were ongoing violations of duty, including misrepresentation, fraud, and breach of fiduciary obligations.
- The harm—lost income, reputational damage, and procedural obstruction—accrued monthly, not as a one-time injury.

While the prototypical examples cited involve environmental migration (e.g., pollution, flooding), the principle underlying the doctrine is repetition and evolving harm—not the physical nature of the tort.

B. Courts Have Applied Tolling Doctrines to Fraud, Misrepresentation, and Concealment

Even if the continuing tort doctrine is narrowly construed, Montana law recognizes equitable tolling where defendants actively conceal wrongdoing or prevent discovery of the claim. See:

- § 27-2-102(3), MCA (discovery rule applies when facts are not reasonably knowable)
- *Plouffe v. Montana DPHHS*, 2003 MT 62, ¶ 18 (tolling appropriate where plaintiff is prevented from timely filing due to external barriers)
- *Young v. Datsopoulos*, 249 Mont. 466, 470 (limitations begin when plaintiff knows essential facts—not legal theories)

Appellant’s case involves systemic concealment, delayed production of falsified records, and judicial restraints that prevented timely filing. These factors warrant tolling and recognition of ongoing harm.

VII. The District Court Erred in Rejecting Equitable Tolling and Mischaracterizing Judicial Obstruction

Appellant respectfully asserts that the District Court’s denial of equitable tolling and dismissal of judicial obstruction claims reflect a narrow and overly formalistic reading of Montana law, inconsistent with the factual record and constitutional principles of access to justice.

A. Equitable Tolling Applies Where Systemic Barriers Prevent Timely Filing

Contrary to the District Court’s conclusion, Montana courts have recognized that equitable tolling may apply when a plaintiff is prevented from timely filing due to external barriers, including concealment, procedural obstruction, or reliance on misleading conduct. See:

- § 27-2-102(3), MCA (discovery rule applies until facts are reasonably knowable)
- *Plouffe v. Montana DPHHS*, 2003 MT 62, ¶ 18 (tolling appropriate where plaintiff is impeded by institutional barriers)
- *Lozeau v. Geico Indem. Co.*, 2009 MT 136, ¶¶ 4–7, 18 (tolling applies when plaintiff is forced to refile due to jurisdictional error)

Appellant McCaul **did not “sleep on his rights.”** He actively consulted law enforcement, the Gallatin County Attorney, and federal agencies from 2019 through 2025. He also faced repeated procedural obstruction in the Keller Williams matter, including a restraining order that functioned as a prior restraint on legal and media engagement.

The court’s reliance on *Lake County v. State*, 2024 MT 284, is misplaced. That case involved parallel legal remedies—not whistleblower suppression, delayed discovery, or judicial interference. Appellant’s circumstances are exceptional and warrant equitable relief.

B. Judicial Obstruction Constitutes a Tolling Trigger When It Prevents Access to Evidence or Filing

The District Court dismissed Appellant's claims of judicial obstruction as irrelevant because Venture 1 Defendants were not parties to the Keller Williams case.

This reasoning ignores the interconnected nature of the misconduct and the fact that:

- Keller Williams agents and affiliated counsel withheld material records relevant to both cases.
- Judge John C. Brown's restraining order and procedural delays prevented Appellant from accessing evidence and pursuing related claims.
- The 4.8-year delay in Keller Williams discovery directly impaired Appellant's ability to file against Venture 1 Defendants within the statutory window.

Montana law does not require obstruction to originate from the same defendants to justify tolling. What matters is whether the plaintiff was prevented from timely asserting his rights due to systemic or institutional barriers.

VIII. The District Court Erred in Dismissing Spoliation Allegations as Legally Irrelevant

Appellant acknowledges that Montana law does not currently recognize an independent cause of action for first-party spoliation of evidence. However, the District Court's conclusion that spoliation is immaterial to the case mischaracterizes its evidentiary and procedural significance.

A. Spoliation Is Actionable Through Sanctions and Adverse Inference

While *Oliver v. Stimson Lumber Co.* and *Spotted Horse v. BNSF R.R. Co.* confirm that first-party spoliation is not a standalone tort, both cases affirm that Montana courts retain broad authority to:

- Impose sanctions for destruction or concealment of evidence.
- Apply adverse inference rules where a party's misconduct impairs the truth-finding process.
- Consider spoliation as a factor in evaluating credibility, damages, and equitable relief.

Appellant's allegations of reverse-forged documents, delayed production, and concealment by Venture 1 Defendants are not merely procedural—they go to the heart of the factual disputes and the integrity of the litigation process.

B. Spoliation Supports Tolling, Fraud Allegations, and Pattern of Misconduct

Even if not pled as a separate cause of action, spoliation:

- Reinforces Appellant's claims of fraudulent concealment and bad faith negotiation.
- Supports equitable tolling arguments by demonstrating that Defendants actively prevented timely discovery of material facts.
- Undermines Defendants' reliance on the statute of limitations by showing that Appellant was deprived of access to key evidence until 2025.

The court's dismissal of spoliation as immaterial ignores its evidentiary weight and its relevance to multiple claims, including fraud, breach of fiduciary duty, and procedural obstruction.

These errors cumulatively deprived Appellant of a fair and impartial adjudication.

PRAYER FOR RELIEF

Appellant respectfully requests that the Montana Supreme Court:

1. Reverse the District Court's rulings that resulted in dismissal or suppression of Appellant's claims.
2. Request for Judicial Correction of Errors and Acknowledgment of Prior Failures
Appellant Dan Patrick McCaul respectfully requests that the Montana Supreme Court issue an order directing that His Honor and/or His Honor's staff members correct the plain and/or intentional errors made by Judge Brown and his staff in the proceedings below.

These errors materially affected the fairness, accuracy, and integrity of the record and include:

- Procedural misapplications that denied Appellant equitable tolling and evidentiary review;

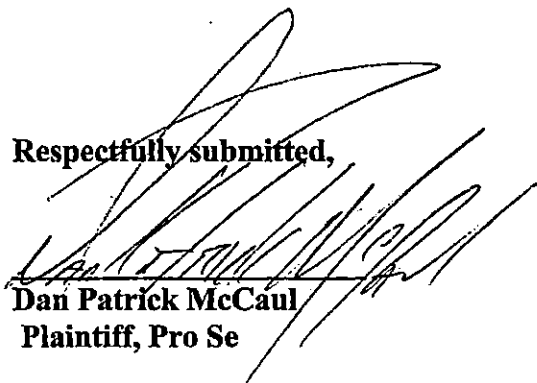
- Failure to address or acknowledge spoliation, document fabrication, and discovery misconduct;
- Dismissal of claims without proper consideration of ongoing concealment and systemic obstruction;
- Disregard of Appellant's disability-related barriers and administrative delays.

Appellant further requests that the Court acknowledge the prior failures in the handling of this matter and take appropriate steps to ensure judicial correctness, fairness, and transparency going forward.

This request is made in the interest of justice and to preserve the integrity of the appellate process.

3. Remand the matter for expedited proceedings with appropriate judicial oversight.
4. Grant any further relief deemed just and proper under the circumstances.

Respectfully submitted,



Dan Patrick McCaul
Plaintiff, Pro Se

DATED this 25th day of September 2025.

CERTIFICATE OF SERVICE

This is to certify that the foregoing document was served on this 25th day of September 2025, upon the parties whose names and addresses by the following means.

[X] Email:

Courtesy Copy:

The Honorable Judge, John C. Brown

Bowen Greenwood (hardcopy will follow via US Mail Services)

Montana Eighteenth Judicial Clerk of District Court - Judicial Filings

Griffin B. Stevens
CROWLEY FLECK PLLP
P.O. Box 10969
Bozeman, MT 59719-0969
Telephone: (406) 556-1430
Facsimile: (406) 556-1433
gstevens@crowleyfleck.com
Attorneys for Venture 1, LLC and Tobin Capp
Attorney for Ben Carter and Jennifer Carter