

FILED

03/13/2026

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 25-0520

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA-25 0520

LOURDES RUSSEL,

Plaintiff and Appellee,

Vs,

TRACY SMITH,

Defendant and Appellant.

FILED

MAR 13 2026

Bowen Greenwood
Clerk of Supreme Court
State of Montana

RESPONSE BRIEF OF APPELLANT

On Appeal from the Montana District Court of Lewis and Clark County, the
Honorable Judge Mike ~~McMahon~~ ^{McMahon}, Presiding.

APPEARANCES:

Reavis Law, PLLC

316 N. 33rd ST.

Billings MT, 59101

James@jamesreaveslaw. Com

Attorney For Appellee

TRACY D. SMITH

P.O Box 851

Lincoln Mt, 59639

Pro-Se

Defendant and Appellant

CERTIFICATE OF SERVICE

I, Leslie D Saunders, hereby certify that I have served true and accurate copies of the foregoing Brief – Appellants Reply to Dismissal.

Reavis Law, PLLC

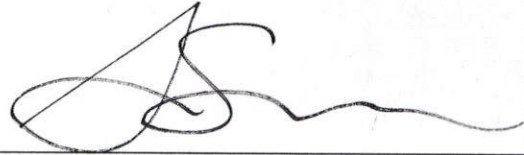
316 N. 33rd St

Billings MT, 59101

james@jamesreaveslaw.com

Attorney of Appellee

Dated this day the 7th of March, 2026.



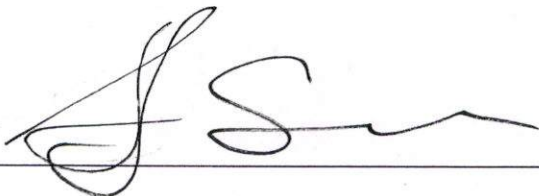
Leslie Saunders Leal Assistant Appellant.



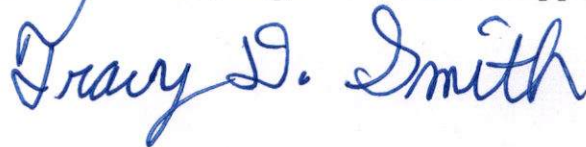
CERTIFICATE OF COMPLIANCE

Pursuant to Rule II of the Montana Rules of Appellate Procedure, I certify that this Response Brief is Printed a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and intended material; and word count calculated: 2,487 words by Microsoft Word for Windows is excluding certificate of service, and certificate of compliance.

Dated this day the 7th of March, 2026.

A handwritten signature in black ink, appearing to read 'LS', written over a horizontal line.

Leslie Saunders, Legal Assistant of Appellant

A handwritten signature in blue ink, reading 'Tracy D. Smith'.

IN THE SUPREME COURT OF THE STATE OF MONTANA

<p>TRACY D SMITH, Plaintiff/Appellant, v. LOURDES RUSSELL, Defendant/Appellee.</p>	<p>Case No.: DA-25-0520 BRIEF RESPONSE SUPREME COURT OF THE STATE OF MONTANA</p>
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COMES NOW, The Plaintiff/Appellant, TRACY D SMITH, and response to LOURDES RUSSELL, Verified Brief by, Judge Swingley as follows:

ARGUMENT

FILED
~~MAR 04 2026~~
Bowen Greenwood
Clerk of Supreme Court
State of Montana

I, Tracy D Smith, Appellant in the about case would like to respond to the Appellee’s response to the facts of this case. “The Protective and Restrictive Covenants for Elk Trail Park, and my constitutional rights regarding fair and impartial Judge, were clearly violated and ignored regarding Tracy Smith, by the court.

The Appellee’s own Lawyer States: “Tracy D Smith tried to move cases to District court on November 11, 2022. The Reason for doing this was because of a blatant bias against Tracy D Smith in the Justice Court. A part time, fill in, Judge advised me that if I was unsatisfied, that I would be able to move the matter to District Court in Lewis and Clark County.

The Appellee’s Lawyer states: “Smith did not assert if his property was part of the covenant.” This is misleading and makes a deliberate attempt to mislead the court. Under

Number 12 Enforcement, "These Covenants and Restrictions may be enforced by any lot owner by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages." Tracy D Smith chose to have the violation or to recover damages.

The Appellant has a right to keep, "Livestock out of his subdivision, Tracy Smith lives in year-round. No Landowner in Elk Trail Loop, has ever "housed livestock" this subdivision. I am certain of that, because my current age is 65 years, my parents had the place before me in 1974.

The Covenants do not say under number two animals, no husbandry of animals. They also state; "No livestock," or "No poultry." Tracy Smith did not write these Covenants but as a landowner, neighbor, I do have the legal right to see that they are enforced or exercise legal action if not.

The Garage was put on the edge fo the property deliberately. The Appellee knew the location of the building, and the rules, years before she intentionally built against the set back rule. The builder of the garage told me that directly and would testify to that fact, as well as Ms. Russell's own son and ex-husband. The builder would be happy to testify to that fact.

As far as the Main Building claims, a building with a concrete floor and foundation, I would believe "classify" as a main Building. There are 72 total building lots in the area. Every landowner has followed the Elk Trail Park Convenances, but the Appellee, Ms. Russell.

Since Tracy Smith filed the lawsuit, Ms. Russell has made Tracy Smiths life difficult around the subdivision. Ms. Russell filed five protection orders against Mr. Smith, also recruiting other neighbor homeowners to get involved. I have been in and out of court over Fifty

times because of Ms. Russell's vendetta, regarding the Covenants. I have been subjected to harassment by Ms. Russell. The cost of, out of pocket, exceeds 40,000 dollars in expenses. Which has resulted in completely draining the little money I had saved in savings.

I have paid for one of those, high priced, lawyers, Dela Bovi Martin and Reed. This Law Firm took 14,500 dollars upfront and then did absolutely nothing to help in my case. Thus, making it impossible for me to have the money to retain another lawyer. This resulted in me having to represent myself.

Ms. Russell's Lawyer chastised Mr. Smith for the way his Appeal was put together. Mr. Smith had requested assistance from the Montana Law Library. I do not claim to be a lawyer, nor does I claim to know the way things are written or referenced in terms of court documentation.

Ms. Russell's Lawyer states know Mr. ^{Smith} ~~Smith~~ is a Pro se litigant, Mr. Smith should be treated and/or punished for trying to defend his Constitutional Rights as a landowner and Pro Se litigant. This was a very simple case; the Covenants are clear. "If Mr. Smith's rights were not trampled on by the Justice Court and its personal vendetta it has held against Mr. Smith, this case would not need to be in any other court. Small claims court let alone the Montana Supreme Court.

Ms. Russell's Lawyer has no right to introduce intentional lies to this court, under statements of fact. This Lawyer is stating that Tracy smith took out his shotgun and fired multiple blasts into the sky. This "statement of the facts," is nothing more then, fabrication and deception by this lawyer. Police Report and Court Record show that this is not true.

The Sherrif came to my house at 1:30 a.m., while I was asleep, they came with guns pointed at me, on my own property, and the call was for "loud music." I was asleep when suddenly woken up at gunpoint by the sheriff's office. I was issued a ticket for "loud music," which I was able to beat after 5 months of harassment.

Now, about the harassment of the unjustified concern for Ms. Russell's safety; Mr. Smith points to the "two" of the five restraining orders, that I believe Ms. Russell lied to the court about for the reasons to subject harassment and weaponize the protective order Law against Tracy Smith.

The attached two Orders for Dismissal are two years apart, plus the three years Ms. Russell lied and got away without one. That is why Bridger Russell, Appellee's Son, finally got involved to help me get the truth out. I ask this court to examine the two attached Orders marked in Exhibit A, B. The second lawsuit for defamation, Tracy D Smith, heard Judge Swingley, in open court, state he had no jurisdiction regarding the defamation and harassment. Thus, the judge would have to sed it up to District Court. Several months after the fact Judge Swingly dismissed it. Mr. Smith has shown more than just harassment in the brief. Mr. Smith has also shown clear bias by the court and deliberate misleading truths in Ms. Russell's Lawyers Brief.

Ms. Russell's Lawyer further states to this court with misleading intentions (sic 2). "No commercial house pets are excluded from the convenances." "No livestock." Ms. Russell's Lawyer is trying to refer to Ms. Russell's horses are "house pets." However, that wouldn't matter if that even did apply as a house pet, because of what the Covenant states about "house pets." That is quite a stretch to refer to animals that are over 1000 pounds at time are "house pets."

When the Garage has a foundation and a concrete floor it is a main building. 20 ft set back is for sever^a reason and Ms. Russell or her Lawyer have any right to change it, the rules apply to every landowner in Elk Trail Loop.

Ms. Russell has brought and kept these Horses (Livestock) in Elk Trail Loop even though this lawsuit was currently in effect, and active in the Justice Court. This directly violated the, only, Motion that I filed in Justice Court and the reason why. Judge Swingley subsequently “punished” Mr. Smith for doing so. I asked for a non-biased Judge, was refused and ignored my Motions for change of Judge. I have filed four different Motions with Swingley’s court, and not one of them was acknowledged by the Justice Court, however they were all filed correctly and submitted correctly.

Ms. Russell’s frivolous Motion on June 5th, 2023, for Failure to File and Opposing Brief, that owning “pet horses” did not constitute animal husbandry. Again, Tracy Smith points out to this Court the hypocrisies by Ms. Russell’s Lawyer. No Livestock, No Poultry, and No husbandry of animals. This Attorney and Ms. Russell has denied the facts of the Covenants long enough, any high school graduate could read and interpret what these Covenants for Elk Trail Park Subdivision state in Black and White.

Ms. Russell chose to spend of 20,000 dollars to fight these simple and strait forward Covenants, that in fact she has admitted to violating the very exact Covenants, in open court, as well as, in writing. Ms. Russell and her Lawyer are trying to put emphasis on the fact that I am representing myself and exploiting me as a Pro-Se litigant knowing that I lack the proper funds for a lawyer. It has cost Mr. Smith over 40,000 dollars because of Ms. Russell’s harassment for the past 5 years. 5 unjustified Protection Orders, as well as trips back and forth to and from

court. All this when the facts are clear, "Follow the Covenants for Elk Park Trail Subdivision."
Just as all other landowners in this subdivision.

It is my belief that, Ms. Russell chose to hire a lawyer because she can read the Covenants and needs assistance getting around them with her owning the horses and has harassed me with the weaponization of the unsubstantiated, Orders of Protection, and having the complete Bias of Lewis and Clark County Justice Court Judge.

Mr. Smith further points out to this court, That the Appellee's lawyer has focused on me being a Pro Se Litigant than proving the why having horses gives Ms. Russell right within the Covenants. Mr. Smith, Appellant was in the District Court Clerk's office and clerks' office for the help to fill out paperwork to the State of Montana Supreme Court. While getting that help, I was told noting to the fact of a "surety bond to protect funds owed to Ms. Russell.

The Lawyer requested that this court to impose Sanctions in the form of Attorney Fees and costs. As Mr. Smith has said above, I do not have the money for another Lawyer, Ms. Russell chose to hire these Lawyers who apparently have told Ms. Russell "The Convenances do not mean anything to her regarding her stance. This Attorney and Ms. Russell should be held financially liable for Mr. Smith's Attorney fees, and pain and suffering for the continual harassment that he has been subjected to.

This Appellee Lawyer states: "Mr. Smith filed a civil complaint in Justice Court of record and lost. Mr. Smith lost because of total neglect by this Judge and violation of Mr. Smiths Rights in the Justice Court. As this Appellee's Lawyer states the Judge "threatened" to throw Mr. Smith in jail several times in the civil case. That's not Biased? Mr. Smith has been threatened by the judge, more than once, that he would rule against anything Mr. Smith's name is on.

Judge Swingley stated Mr. Smith did not respond to a Motion. Mr. Smith, to this very day has not received such motion by mail or otherwise. Mr. Smith has also testified under oath to this fact, with penalty of perjury. Thus, the document that was used in Justice Court to dismiss is Nolen void. Unless The Appellee or the court can provide proof that I received the document and where they sent it to. It is a grave injustice of the court to rule in favor of the Appellee, when the court was aware at the time of me not receiving the Motion.

Mr. Smith has traveled back and forth, Lincoln Montana to Helena Montana Justice Court 50 different times because of this Lawsuit and Motions and Orders from Ms. Russell. In attempt to weaponize the Justice court in her favor. The trial Ms. Russell's Lawyer keeps misleading this court with is a farse. The case was thrown out and Mr. Smith was found Not Guilty by the District Court Judge.

CONCLUSION

Finally, Mr. Smith states again of the Appellee Lawyer misleading this court of what the Covenants say and chastising Mr. Smith for trying to defend himself against some dishonest Appellee and her Lawyer. As a Pro Se litigant, I am appalled because Ms. Russell hired a, high priced attorney, that they have the right to intentionally mislead and fabricated the basic facts of this case. Again, at the Appellee Attorney's continual slander of a landowner, without money for a greedy attorney, and such attorney condemning a Pro Se litigant against facts of the case- covenants can not be argued, there in English language but Appellee's attorney wants the Covenants (rules) ignored because of Ms. Russell thinks she is about the Law, and the Conveniences instructed by the Court.

I, Tracy D Smith, Appellant hereby request this court to over-look any flaws in my preparation or wording of this Brief. I am a 65-year-old retired individual who lives in a secluded area, equipped with a phone with a landline and no computer, is on a limited budget and has spend over 40,000 U.S. Dollars to the day on this Lawsuit and harassment by the Appellee.

Ms. Russel, as well as her high-priced attorney believe that Mr. Smith should Pay. They believe this because of ~~Mr. Smith~~^{Ms. Russel} refusing to abide by the Property Covenants in Elk Trail Loop. Sherrif, Leo Dutton of Lewis and Clark County, personally told me to file in Justice Court because it was a civil matter. People get sued every day, and it's their choice to hire or not hire an attorney. Mr. Smith's not responsible for Ms. Russell's bills.

Appellant, Tracy D Smith, concludes with, I am not an Attorney. I may not know all the tricks of the court, I apologize to the court in advance for my ignorance regarding procedure, but I am smart enough to read and comprehend the Lewis and Clark County. Covenants for the Elk Trail Park Subdivision and Ms. Russell, with her attorney, continually try to mislead the court with the definition of the very clear Covenants.

I, Tracy D Smith, have great faith in this court and believe The Montana State Supreme Court will see the facts that I am trying present, and not pass judgement on my Procedural errors. I am a Pro Se litigant, and had never expected to have to represent myself, especially all the way to the Montana Supreme Court.

The Justice Errored in dismissing my claim, legal question reviewed De Novo Plouffv v. State, 2003, MT, 62-918,314,66P3d-316. Under Simpkins v. Speck, 2019 mt 120, 11 395 Montana 509, 443, P.3d-428. Justice Court factual Findings are seen for error. Mr. Smith,

Appellant, know it was improper for Justice court to dismiss Smiths claims, without first giving Mr. Smith an opportunity to be heard on dismissal as well as judgment.


Appellant, Tracy D Smith

CERTIFICATE OF SERVICE

I certify that I filed this

Petition

Motion

Other Response to Brief
[Name of document]

with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

Reavis Law
[Name of opposing counsel]

316 N 33rd St
[Address] Billings MT 59101

Counsel for Reavis Law - Appellee

Tracy Smith
[Other party representing himself or herself]

Po Box 851
Lincoln, MT 59639
[Address]

DATED this 4 day of March, 2026.

Tracy D. Smith
[Signature]

Tracy D Smith
[Print name]

