

1                   IN THE SUPREME COURT OF THE STATE OF MONTANA  
2   Case No. DA 15-0336

3 John D Runkle, an individual

4                   Plaintiff/Appellant,

5 v.

6 Duane Allen, an individual, Geoff Decker,

7 An individual, and DOES 1 through 20

8                   Defendants/Appelles,

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10   APPELLANT'S REPLY BRIEF

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12                   On appeal from the Montana Nineteenth Judicial District Court,  
13   County of Lincoln  
14   Cause No. DV 13-261  
15   Honorable James Wheelis Presiding

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17 **APPEARANCES:**

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1                                   **I.       SUMMARY OF ARGUMENT IN REPLY**

2  
3           In his response brief, Appellee asserts claims that contradict the District  
4 Court orders and uses patently false or grossly misleading statements as a personal  
5 attack on Appellant as the basis for his Response.

6           Appellee also claims that the filing of Appellant’s brief was late and that  
7 Appellant’s opening brief does not conform to *Mont.R.App.P. 12*.

8           Appellee’s Response is flawed in that it states both that Appellee (Allen)  
9 owned a portion of the cabin and later states in the Response that Appellee (Allen)  
10 owned the entire cabin. The District Court only ruled that Appellee owned a  
11 *portion* of the cabin and didn’t even clarify that point. The District Court’s ruling  
12 was that Appellant did not own the portion of the cabin lie on Appellee’s property.  
13 Additionally, the Response fails to mention that Appellee destroyed the entire  
14 cabin, even the portion that the District Court implied was owned by Appellant.

15           Appellee argues that Appellee had the right to remove the entire structure  
16 but fails to explain how the removal of the entire structure transcended to  
17 Appellant’s ownership or partial ownership. Rather than explain this dilemma,  
18 Appellant misstates the District Court’s ruling by stating that Appellee owned the  
19 entire structure and that Appellant’s portion of the structure was left intact. This  
20 would mean that Appellee removed only half the structure which obviously did not  
21 occur as this was a constructed building and is nonsensical as the structure was a  
22 fixed cabin on a foundation.

23           Appellee argues that Appellant introduces for the first time the issue of joint  
24 ownership in regards to waste and requests that the Supreme Court should not  
25 review this for the first time on appeal. One of the basis for Appellant’s appeal is

1 not newly introduced evidence, the question of joint ownership was introduced and  
2 ruled on by the District Court in its ruling. Appellant did not request a ruling for  
3 partial ownership, the District Court implied and ruled that the structure was only  
4 half owned by Appellee and half owned by Appellant. Therefore, Appellant has  
5 not introduced new argument, Appellant is basing his appeal in part on the District  
6 Court's own ruling of partial ownership.

7 In regards to the issue of Trespass, Appellee's Response argues that Appellee  
8 was under a duty to remove the structure as it was owned by Appellee, again  
9 ignoring the fact that the structure was in dispute and that the District Court ruled  
10 that Appellee owned only a portion of the structure.

11 Appellee argues that no intentional infliction of emotional distress occurred  
12 by responding that the stress must occur from a wrongful act. Appellee responds  
13 that this did not occur although based upon numerous trespasses and requests to  
14 cease the trespass, Appellee certainly committed a number of "wrongful" acts.

15 In regards to Appellee's argument on Rule 11(b) sanctions, Appellee fails to  
16 point out (as Appellant did) that no hearing was scheduled before the issue of  
17 sanctions was ruled on as is required. Appellee is correct in that Appellant did not  
18 appear at the hearing to determine the reasonable amount of the sanctions as the  
19 District Court was required to hold a hearing before granting sanctions and this  
20 was clearly not done.

21  
22 **II. ARGUMENT**

23  
24 **III. APPELLEE/DEFENDANT'S RESPONSE IS  
25 MORE OF A PERSONAL ATTACK THAN A  
LEGAL ARGUMENT**

1 **A. Appellee’s personal attack on Appellant is unprofessional at best and**  
2 **should be stricken from the record.**

3  
4 Appellee’s Counsel apparently decided that personally attacking Appellant  
5 was the way to get her point across to this court. Appellee’s response is replete  
6 with numerous attacks that Appellant feels compelled to point out to the court and  
7 would like to illustrate these specious, patently false, grossly misleading statements  
8 in this attack by pointing out just how many irrelevant and unnecessary statements  
9 Appellee’s counsel makes in her response:

- 10 1. *“Runkle is the self proclaimed expert in real estate matters and real*  
11 *estate law.” (Appellee’s Response Page, 4, Para. 4)*
- 12 2. *“Runkle has an extensive history in being sued and initiating lawsuits*  
13 *as a pro se litigant” (Appellee’s Response, Page 4, para. 5)*
- 14 3. *“Runkle, a self proclaimed amateur lawyer……” (Appellee’s*  
15 *Response, Page 7, Para 3, line 1)*
- 16 4. *“Runkle judicially confessed in pending divorce proceedings that he*  
17 *had no interest in any real property in Montana.”*
- 18 5. *“in pro se litigation, Runkle attempted to abuse the legal system for*  
19 *self gain. For example, in prior pro se divorce proceedings, Runkle*  
20 *denied ownership of any real property (DV 13-26).” ……………”If*  
21 *Runkle owned no real property, the court could award no real*  
22 *property to his wife.”(Appellee’s Response, Page 21, Para 1)*
- 23 6. *In another pro se proceeding, Runkle sued to collect damages from a*  
24 *defaulting party. Runkle failed to mention anywhere in his pleadings*  
25



1                   that he had been compensated by an insurance company. (CV 12-  
2                   97).” (Appellee’s Response, Page 21, Para 1)

3                   Appellant feels compelled to defend himself from the personal attacks to  
4                   avoid being smeared in front of this court. If what Appellee’s counsel says is true,  
5                   Appellant should be facing charges for perjury or fraud. However, the things that  
6                   Appellee’s counsel has implied or expressly claimed are false and unprofessional  
7                   allegations as this attempted smear of Appellant requires a short defense in reply.  
8

9                   **B. Appellant’s divorce proceeding is irrelevant and grossly exaggerated by**  
10                   **Appellee and his counsel.**

11                   Suffice it to say that in Appellant’s divorce proceedings, both Appellant and his  
12                   former spouse are on good terms and both filed a document withdrawing an  
13                   erroneous affidavit and filed the withdrawal document with the court. The divorce  
14                   proceeding was withdrawn and finalized overseas where Appellant’s former  
15                   spouse resides. There is not and never has been an issue of disputed property  
16                   between Appellant and his former spouse. This attack on Appellant is unnecessary  
17                   and irrelevant to the issue at hand.  
18

19                   **C. Appellant has never considered himself an expert in real estate law, nor is**  
20                   **he an attorney as Appellant testified to**

21                   It is true that Appellant has been a real estate broker for over 25 years and  
22                   therefore is an expert in some areas of real estate. However, Appellant *NEVER*  
23                   stated that he was an expert in real estate law and continually advised Appellee’s  
24                   counsel that he was not an attorney.  
25

                  Appellant’s answer during testimony (Runkle depo) excerpts:

1 page 47, lines 17,18; *“From a legal standpoint, that’s something for the*  
2 *courts to decide, not for an individual to decide”*

3 page 67, lines 6,7; *“I’m aware that there is some law, but if you’re*  
4 *asking me to quote it, I can’t. I’m not an attorney.”*

5 page 78, lines 8,9; *“You’re looking for a legal conclusion that I can’t*  
6 *give you. I’m not a judge or an attorney.”*

7  
8 **D. Appellee’s inference that Appellant committed some sort of fraud on the**  
9 **court in CV 12-97 is preposterous and unprofessional.**

10 In CV 12-97 Appellant testified in open court during the “prove up” phase as to  
11 the receipt of some insurance proceeds which were not even half of the amount of  
12 damage that was caused by the defaulting party. (The default occurred almost 2  
13 years into the litigation after defendant failed to further respond.) Additionally,  
14 Appellant openly testified in this matter in open court at the “prove up” as well as  
15 testifying at his deposition in this matter as to the receipt of insurance proceeds  
16 which did not come close to covering the damage by stating; “I think I received  
17 about 90,000, but there was almost 200,000 in damage” (Runkle depo; page 20,  
18 lines 6-7, referring to CV 12-97). Therefore, as Appellee’s counsel was the person  
19 conducting the deposition, Appellee’s counsel was aware that her statement was  
20 false and misleading. Appellant never failed to inform anyone of the insurance  
21 proceeds received. . This attack on Appellant is unnecessary and irrelevant to the  
22 issue at hand.

23  
24 **E. Appellant’s previous litigation is irrelevant to the matter at hand**  
25

1 It is true that Appellant has been involved in multiple litigation scenarios. (In  
2 fact, Appellant was sued in this small community for non-disclosure of a septic  
3 system being inoperable. The case was dismissed as having no basis). However,  
4 having operational real estate offices in seven states leaves the high probability that  
5 an owner/broker will be sued on numerous occasions for multiple issues throughout  
6 numerous jurisdictions. Appellant is not normally the initiator of the litigation and  
7 for Appellee's counsel to twist the words of Appellant during his deposition is  
8 unprofessional at best. (Runkle Depo., p. 6, lines 15-20, Affidavit of John Runkle,  
9 D.C. Doc. 38) demonstrating the fact that Appellant had offices and real estate  
10 broker's licenses in seven states.

11 These types of personal attacks have no place in a District Court document, much  
12 less a document filed with the Supreme Court and Appellant objects to the content  
13 of the statements and asks that they be stricken from the court record.

14  
15 **IV. APPELLANT'S BRIEF WAS NOT LATE AND**  
16 **ALTHOUGH NOT COMPLETELY CONFORMING**  
17 **TO THE REQUIREMENTS OF MONT.R.APP.P. 12,**  
18 **APPELLANT HAS PROVIDED THE**  
19 **INFORMATION REQUIRED AND THE**  
20 **ARGUMENT**

21 **A. Appellant's opening brief was not late**

22 Appellee states that Appellant's opening brief was late but taking into  
23 account that the Notice was given on September 3<sup>rd</sup>, 2015 and the clock  
24 began the following day on September 4<sup>th</sup>, Appellant had until October  
25 4<sup>th</sup>, 2015 to file unless the date landed on a weekend (which it did) and  
therefore would have until the next business day which was October 5<sup>th</sup>,  
2015. (The Brief was filed on October 5<sup>th</sup>, 2015). Even if the clock

1 began on September 3<sup>rd</sup>, 2015 the 30<sup>th</sup> day would still land on a weekend  
2 and therefore, Appellant would have until the following business day  
3 which would be October 5<sup>th</sup>, 2015.  
4

5 **B. Appellant has complied with Mont.R.App.P. 12 in spirit although**  
6 **regrettably there is a procedural error**

7 In regards to Appellant not complying to Mont.R.App.P. 12, Appellant  
8 although not completely in compliance has provided the information necessary to  
9 review the case. If the Supreme Court decides the filing does not comply with  
10 Mont.R.App.P. 12, Appellant requests the court return the file to be properly  
11 briefed or give leave to Appellant to refile without prejudice with leave to amend  
12 the opening brief. Appellant requests some leeway as a pro se Appellant as  
13 Appellant has never appeared or filed any documents with the Supreme Court  
14 previously.  
15

16 **V. APPELLEE'S RESPONSE IS CONTRADICTORY**  
17 **AS IT RELATES TO THE OWNERSHIP OF THE**  
18 **CABIN (STRUCTURE)**

19 **A. Appellee's argument misstates the District Court rulings,**  
20 **jumps to conclusions and contradicts himself in his argument**

21 In Appellee's argument regarding cabin ownership, Appellee initially states  
22 in pertinent part that Allen owned a portion of the cabin that lie on his property:

23 *"The Court correctly ruled that Allen owned that portion of the cabin*  
24 *located on Allen's property"* (Appellee's Response, Page 13, Para 3)  
25

1 Appellee then contradicts that analysis of the court's ruling by stating that  
2 Appellee owned the *entire* cabin.

3 *"The district court correctly ruled that Allen owned the cabin located on*  
4 *Allen's property"* (Appellee's Response, Page 17, Para. 2)

5 Appellee then states that Appellee only removed that portion of the cabin  
6 that Appellee owned and left the "encroaching portion" on Appellant's property.

7 *"There is no dispute that Allen left the encroaching portion of the cabin on*  
8 *Runkle's property."* (Appellee's Response, Page 15, Para.2) {In fact, there is a  
9 huge dispute as Allen (Appellee) tore the entire building off of its foundation and  
10 left nothing but a destroyed porch on Appellant's property.} *"How they would*  
11 *attack the problem never became known, because your client destroyed the cabin*  
12 *before we could get that far."* (Runkle depo; page 59, lines 10-12)

13 Additionally, Appellee states facts not in evidence by stating that Appellant  
14 knew that the cabin was located on Allen's property (This is patently false. Both  
15 Appellant and Appellee were aware that the building was split approximately  
16 50/50 by the boundary line with all access, ingress, egress and approach on  
17 Appellant's property) by stating the following:

18 *"In the present case, Runkle claimed ownership to a cabin that Runkle knew*  
19 *was located on Allen's property."* (Appellee's Response, Page 21, Para. 2).

20  
21 **B. The property line in general split the structure down the**  
22 **middle at the time Appellee destroyed the structure.**

23 The only real relevant fact germane to the above contradictions is that the  
24 cabin was found to be bisected almost perfectly on a 50/50 basis with half the  
25 building on Appellant's property and half the building on Appellee's property and

1 that Appellee tore the ENTIRE structure from its foundation and destroyed it.  
2 There was no “encroaching” portion of the building left on Appellant’s property  
3 other than a destroyed porch (torn from the building during the removal by  
4 Appellee).

5 **C. Law enforcement warned Appellee to cease trespassing onto**  
6 **Appellant’s property just prior to Appellee’s destruction of the**  
7 **structure.**

8 Appellee’s attempt to argue that Appellant had no ownership interest at all  
9 (contradicting the District Court’s own ruling) or that any portion of Appellant’s  
10 ownership portion of the cabin was left alone is ludicrous. Appellant’s own  
11 testimony which were never contradicted by Appellee at any time during the  
12 litigation in regards to the destruction of the structure and the trespass issue are as  
13 follows in pertinent part:

14 *“And that’s what they were looking into at the time your client decided to*  
15 *destroy the cabin” (Runkle depo. Page 59, lines 1,2)*

16 *“How they would attack the problem never became known, because your*  
17 *client destroyed the cabin before we could get that far.” (Runkle depo; page 59,*  
18 *lines 10-12)*

19 *“Well, your client went up and cut my lock off and tore my no-trespassing*  
20 *signs down on the building, which he admitted he did in the admissions. He also*  
21 *admitted that he trespassed on to my property. When I contacted the sheriff’s*  
22 *office, I said, Listen, I don’t want anyone arrested, I just want you to explain to Mr.*  
23 *Allen that he can’t just go trespassing on my property and cutting off my locks and*  
24 *my no-trepassing signs. And they did that, and it’s noted in the police report that*  
25

1 they warned him to stop criminally trespassing on to my property.” (Runkle depo;  
2 page 60, lines 10-20)

3 It was after Appellee had been warned by law enforcement not to criminally  
4 trespass on Appellant’s property that Appellee, in a fit of anger tore the cabin off  
5 of its foundation and destroyed the entire structure including Appellant’s portion of  
6 the structure.

7  
8 **VI. APPELLEE FAILS TO MENTION IN HIS**  
9 **ARGUMENT THAT APPELLANT NEVER**  
10 **RECEIVED A HEARING PRIOR TO SANCTIONS**  
11 **BEING ISSUED UNDER RULE 11(B)**

12 **A. Appellee’s argument that Appellant was afforded the opportunity for a**  
13 **hearing to determine the reasonableness of attorney’s fees fails to**  
14 **address the due process clause.**

15 Appellee quotes *Stipes v. First Interstate Bank of Polson*, 2005 MT 295, 329  
16 *Mont.* 320, 125 P.3d 591, citing as authority in *Byrum v. Andren*, 2007 MT 107,  
17 *Para. 32*, 337 *Mont.* 167, 2007 P.3d 1062. (*Appellee’s Response*, Page 23, *Para*  
18 *2*)

19 What Appellee fails to point out is that in *Stipes v. First Interstate Bank of*  
20 *Polson*, the Supreme Court (as they have on numerous occasions) ruled that the  
21 District Courts *MUST* hold a hearing prior to issuing sanctions. *State v. Toole*  
22 *County (1996)*, 278 *Mont.* 253, 262-63, 924 P.2d 693, 698, and in *Muri v. Frank*,  
23 *2003 MT 316*, ¶ 22, 318 *Mont.* 269, ¶ 22, 80 P.3d 77, ¶ 22. In this case, the District  
24 Court issued a ruling that sanctions were granted and held a hearing to determine  
25 the amount and reasonableness. The Court in *Stipes* did not provide for such an  
after the fact ruling. Rather, the Supreme Court ruled that the hearing must be held

1 *before* sanctions are issued thereby giving the possibly sanctioned party a right to  
2 due process and a chance to be heard *before* issuing sanctions.

3 **B. Appellee’s argument that the hearing on the reasonableness of the**  
4 **attorney’s fees is not the hearing required to provide Appellant due**  
5 **process.**

6 Appellee argues that the hearing on the reasonableness of attorney’s fees  
7 was adequate notice to provide due process to Appellant. In *Stipes*, the court found  
8 that was not the case by stating as follows: “*Moreover, in failing to follow our*  
9 *case law, the Court simply ignores the fact that the grounds for imposing the*  
10 *sanction and the amount and reasonableness of the sanction are discrete legal*  
11 *issues. These issues require different proof and involve different considerations.*”

12 The hearing for “*amount and reasonableness*” of attorney’s fees is not the  
13 same hearing required for due process.

14 **C. The issue of the Rule 11(b) sanctions should not be remanded for a**  
15 **hearing, the sanctions should be reversed in their entirety.**

16 In this case, the issue shouldn’t even be remanded for a due process hearing, the  
17 Rule 11(b) sanctions order should be reversed. There are plenty of issues still to be  
18 sorted out, especially the issue regarding the ownership of the cabin and although  
19 the court may or may not find Appellant’s pleadings first class work, the pleadings  
20 and claims are meritorious as outlined in the pleadings themselves.

21 Even if the court denied Appellant’s appeal other than the Rule 11(b)  
22 sanctions order, Appellant’s conduct certainly did not rise to the level of  
23 sanctionable conduct and therefore the order should be reversed, not remanded for  
24 a hearing in front of a District Court judge that has already determined the  
25 sanctions without due process.

**VII. ALL ADDITIONAL STANDING ON  
APPELLANT’S CLAIMS FLOW FROM THE**







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CERTIFICATE OF SERVICE

I, Appellant in the above entitled action do hereby certify that on the 1<sup>st</sup> day of December, 2015 I mailed a true and correct copy of the foregoing Appellant's Reply Brief, by mailing such copy, addressed to:

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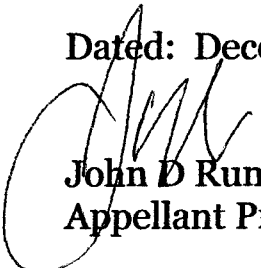
  
John D Runkle  
Pro Se Appellant

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points and does not exceed 5,000 words. Additionally, the brief is not more than 14 pages when deducting the pages utilized for Table of Contents, Authorities and Certificates of Service and Compliance.

Dated: December 1<sup>st</sup>, 2015

  
**John D Runkle**  
**Appellant Pro Se**

/