

DA 18-0280

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 302N

CARRIE ANNE PINTAR, d/b/a AMAZING TAXI,
MICHAEL SPREADBURY, d/b/a HELENA TOWN CAR,
VANCE VANDERPAN, d/b/a GREATER VALLEY TAXI,

Plaintiffs and Appellants,

v.

STATE OF MONTANA, MONTANA PUBLIC SERVICE COMMISSION,
GOVERNOR STEVE BULLOCK, TRAVIS KAVULLA,
MONTANA DEPARTMENT OF LABOR AND INDUSTRY, PAM BUCY,
JUDY BOVINGTON, RASIER-MT, LLC (UBER) TRAVIS KALANICK,

Defendants and Appellees.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis And Clark, Cause No. DDV-2015-639
Honorable James P. Reynolds, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Carrie A. Pintar, self-represented, Livingston, Montana

Vance A. Vanderpan, self-represented, Belgrade, Montana

Michael E. Spreadbury, self-represented, Helena, Montana

For Appellees:

Timothy C. Fox, Montana Attorney General, Kirsten Madsen, Assistant
Attorney General, Helena, Montana

Jack G. Connors, Lee Bruner, Jacqueline Racquel Papez, Doney
Crowley P.C., Helena, Montana (for Raiser-MT, LLC)

Justin Wade Kraske, Montana Public Service Commission, Helena,
Montana

Submitted on Briefs: November 14, 2018

Decided: December 11, 2018

Filed:

A handwritten signature in blue ink, appearing to read "J. A. Smith", is written above a horizontal line.

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Carrie Pintar d/b/a Amazing Taxi, Vance Vanderpan d/b/a Greater Valley Taxi, and Michael Spreadbury d/b/a Helena Town Car, appeal the order of the District Court dismissing their claims against the State of Montana, the Montana Public Service Commission, state officials, state employees (hereinafter State), the former CEO of Uber Technologies, Travis Kalanick, and Rasier-MT LLC, a company that licenses the internet-based, "ridesharing" application, Uber, for use by Montana customers.

¶3 Plaintiffs own and operate taxi cab services pursuant to Class B licenses issued by the Public Service Commission (PSC). In 2015, the Legislature passed Senate Bill 396, which authorized internet-based mobile applications used for ride-sharing, known as transportation network carriers (TNCs), to operate in Montana under a newly created Class E license. This authorization is codified in Title 69, Chapter 12 of the Montana Code Annotated. In response, Pintar filed suit. Her complaint focused on Senate Bill 396's exemption of Class E drivers from the operational requirements imposed upon Class B drivers, such as adherence to certain rate schedules, mandatory service to all customers, and annual report filings. Pintar claimed that, by enacting Senate Bill 396, the State had

breached its quasi-contractual relationship with her, committed an illegal taking of a property right she held in her Class B license, and violated her constitutional right to equal protection.

¶4 Pinter was later joined by Plaintiffs Vanderpan and Spreadbury, who collectively filed an Amended Complaint without the assistance of counsel, which alleged eight counts against the Defendants in addition to Pinter's original claims. Plaintiffs generally accused Rasier-MT of financially benefiting from a law passed by the State but they made only one express claim against the company, contending that Rasier-MT discriminated against Montanans who do not possess credit cards or cell phones.¹ The State moved to dismiss the claims for lack of subject matter jurisdiction and for failure to state a claim for which relief could be granted. After careful consideration, the District Court dismissed all claims against the State and Rasier-MT LLC. On appeal, Plaintiffs challenge the District Court's dismissal as error.

¶5 We review de novo a district court's ruling on a motion to dismiss under M. R. Civ. P. 12(b)(6). *Western Sec. Bank v. Eide Bailly LLP*, 2010 MT 291, ¶ 18, 359 Mont. 34, 249 P.3d 35 (citation omitted). A district court's determination that a complaint has failed to state a claim for which relief can be granted is a conclusion of law, which we review for correctness. *Puryer v. HSBC Bank USA, Nat'l Ass'n*, 2018 MT 124, ¶ 9, 391 Mont. 361, 419 P.3d 105.

¹ Plaintiffs named Travis Kalanick as a defendant in their Amended Complaint but never make any claims against him personally or in his capacity as the CEO of Uber Technologies.

¶6 Appellants raise a number of ill-defined challenges to Senate Bill 396, contending that by enacting this legislation, the State, its agencies, and officers violated their “fundamental right” to “pursue life’s basic necessities” under Article II, Section 3 of the Montana Constitution. Appellants further allege that the State “bre[a]ched fiduciary duty” and wrongfully benefited Raiser-MT LLC “in direct violation” of Article V, Section 11(5) of the Montana Constitution.

¶7 The Legislature has the constitutional power to enact statutes. Mont. Const. art. V, § 1. We presume statutes to be constitutional and make “every intendment” in favor of the legislation, “unless its unconstitutionality appears beyond a reasonable doubt.” *Powell v. State Comp. Ins. Fund*, 2000 MT 321, ¶ 13, 302 Mont. 518, 15 P.3d 877. “Absent a successful constitutional challenge to the propriety of a statute, we are obligated to apply it.” *Elliott v. State Dep’t of Revenue*, 2006 MT 267, ¶ 15, 334 Mont. 195, 146 P.3d 741 (citation omitted). Stated differently, “[t]he question of constitutionality is not whether it is possible to condemn, but whether it is possible to uphold the legislative action,” which may only be declared invalid if we judge that it conflicts with the constitution, beyond a reasonable doubt. *Powell*, ¶ 13. We will validate a challenged statute “unless the constitutional violation is clear and palpable.” *Linder v. Smith*, 193 Mont. 20, 31, 629 P.2d 1187, 1193 (1981) (citation and internal quotation omitted).

¶8 Appellants’ broad assertions do not properly state legal claims. Even giving all benefit of the doubt to the pleadings, the District Court nonetheless correctly dismissed the claims against the state entities and officials on the basis of good faith immunity. Thus,

even assuming for sake of argument that the subject statute was unconstitutional—a question we do not reach here—the state entities, agents, officers, and employees named in this lawsuit are all entitled to civil immunity if they were acting “in good faith, without malice or corruption, and under the authority of law.” Section 2-9-103, MCA. Nothing in the record remotely suggests that the Defendants acted in bad faith by enacting and enforcing Senate Bill 396. That said, without a proper constitutional challenge to the statute, not to mention proof beyond a reasonable doubt of its alleged unconstitutionality, we have no basis to undertake an analysis of the constitutionality of the statutory provisions in question. Further, the Appellants’ claim that Rasier-MT discriminates against Montanans without credit cards and cell phones was properly dismissed for failing to state a proper claim under Article II, Section 4 of the Montana State Constitution.²

¶9 Appellants argue that the District Court’s dismissal of the case “was improper as a matter of law” due to procedural errors by the District Court. We review procedural decisions by the district court for abuse of discretion. *Jacobsen v. Allstate Ins. Co.*, 2009 MT 248, ¶ 26, 351 Mont. 464, 215 P.3d 649. A trial court abuses its discretion if it “acted arbitrarily without the employment of conscientious judgment or exceeded the bounds of reason, in view of all the circumstances, ignoring recognized principles resulting in

² As the District Court noted, Article II, Section 4 of the Montana Constitution protects citizens from being discriminated against “on account of race, color, sex, culture, social origin or condition, or political or religious ideas.” Appellants did not establish that cell phone or credit card users were a protected class for purposes of the provision, nor demonstrate how they fell prey to the alleged discrimination.

substantial injustice.” *West v. Club at Spanish Peaks L.L.C.*, 2008 MT 183, ¶ 44, 343 Mont. 434, 186 P.3d 1228 (citation omitted). Further, “[i]t has long been the rule of this Court that on appeal we will not put a District Court in error for a ruling or procedure in which the appellant acquiesced, participated, or to which appellant made no objection.” *Runkle v. Allen*, 2016 MT 55N, ¶ 19, 383 Mont. 545, 369 P.3d 355 (citation omitted). Here, nothing in the record demonstrates the District Court abused its discretion. Appellants do not cite to, nor does our review of the record reveal, any procedural objection made to the District Court’s handling of the case. Therefore, we will not hold the District Court in error. *Kinsey-Cartwright v. Brower*, 2000 MT 198, ¶ 20, 300 Mont. 450, 5 P.3d 1026.

¶10 Appellants make a general argument that Senate Bill 396 unfairly benefits Class E drivers because they are exempted from the regulatory requirements imposed on Class B license holders, creating unfair competition and stifling the licensed taxi businesses. Appellants raise a worthy fairness argument, and their concerns are understandable. However, “once a statute has been duly approved by the legislative branch, this Court’s role is not one of second guessing the prudence of the conclusions reached.” *Satterlee v. Lumberman’s Mut. Cas. Co.*, 2009 MT 368, ¶ 37, 353 Mont. 265, 222 P.3d 566. Without a showing of the statute’s invalidity, we cannot grant the relief Plaintiffs are seeking—such relief lies only with the Legislature. Similarly, the District Court properly ruled the Appellants’ claim that Rasier-MT wrongfully benefitted from Senate Bill 396 had called into question the legislation, but was unrelated to the company’s actions.

¶11 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court's interpretation and application of the law was correct and its rulings did not constitute an abuse of discretion.

¶12 Affirmed.

/S/ JIM RICE

We concur:

/S/ LAURIE McKINNON

/S/ INGRID GUSTAFSON

/S/ BETH BAKER

/S/ JAMES JEREMIAH SHEA