

FILED

12/19/2023

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 23-0185

DA 23-0185

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 248N

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IN RE MONTANA STATE FUND'S APPLICATION  
FOR RELEASE OF DEPARTMENT OF JUSTICE  
CONFIDENTIAL CRIMINAL JUSTICE INFORMATION  
CONCERNING MATTHEW AILER, CDC-2014-98.

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APPEAL FROM: District Court of the First Judicial District,  
In and For the County of Lewis and Clark, Cause No. CDV-2016-110  
Honorable Kathy Seeley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Matthew Ryan Ailer, Self-represented, Missoula, Montana

For Appellee:

Janell Guge, Special Assistant Attorney General, Montana State Fund,  
Helena, Montana

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Submitted on Briefs: September 20, 2023

Decided: December 19, 2023

Filed:

  
Clerk

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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 Matthew Ailer appeals a November 29, 2022 Order from the First Judicial District Court denying his M. R. Civ. P. 60(b) motion for relief, and the District Court's subsequent March 6, 2023 order denying Ailer's follow-up motions. Ailer's pleadings sought relief from the District Court's February 4, 2016 order releasing to the Montana State Fund confidential criminal justice information (CCJI) relating to Ailer's previous prosecution for insurance fraud in Lewis and Clark County Cause No. CDC 2014-98.

¶3 Following his filing of a workers' compensation claim in October 2011, Ailer was prosecuted by the Department of Justice and found guilty of insurance fraud.<sup>1</sup> Subsequently, in 2016, the State Fund applied for, and was granted, the release of Ailer's CCJI to address a petition Ailer had filed before the Workers' Compensation Court.<sup>2</sup>

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<sup>1</sup> We affirmed Ailer's conviction. *See State v. Ailer*, 2018 MT 18, 390 Mont. 200, 410 P.3d 964 (upholding the district court's decisions regarding Ailer's ineffective assistance of counsel claim, admission of motive evidence, and award of restitution to the State Fund).

<sup>2</sup> Ailer's November 2013 petition claimed benefits for the same 2011 alleged injuries that were the subject of the criminal fraud proceeding. The claim was held in abeyance by the Workers' Compensation Court pending resolution of the related criminal case. The State Fund filed for release of the information as "necessary to provide the Montana State Fund with information necessary to defend its position" on the claim.

Throughout this process, Ailer was represented by an attorney. Six years later, in a series of motions beginning on August 3, 2022, Ailer, now self-represented, moved the District Court for relief, under Rule 60(b), from the 2016 order releasing his CCJI.

¶4 Over the course of four months, beginning in August 2022, Ailer submitted seven different filings to the District Court, some of which were titled simply as “motions for relief.” Ailer utilized identical language in many of these filings, including his repeated assertion that:

Montana State Fund violated the Montana Rules Of Professional Conduct by engaging in Rule 60(B): (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (6) any other reason that justifies relief upon this Court by failing to provide the following information and evidence to [the District Court] when submitting their Application For CCJI[:] Montana Department of Justice, Division of Criminal Investigation (DCI) Agent Anthony Poppler (Poppler) investigated Montana State Fund’s allegations that Matthew committed Theft. Poppler submitted his May 31, 2012 report **finding no evidence** that Matthew committed Theft.

(Emphasis in original.) Accordingly, Ailer asserted he was entitled to relief from the District Court’s 2016 release of his CCJI because the State Fund had engaged in fraud upon the court.

¶5 In a November 29, 2022 Order, the District Court responded to Ailer’s many motions, characterizing them as “nonsensical, but rel[iant] on Rule 60(b)” and denying relief on account of Rule 60(b) motions needing to be filed “within a reasonable time,” typically one year. The District Court also noted that if a Rule 60(b) motion is not ruled on within 60 days, it is deemed denied as a matter of law under Rules 59(f) and 60(c) of the Montana Rules of Civil Procedure.

¶6 Despite this denial, Ailer proceeded to file five additional motions, repeating much of the same language, and insisting the State Fund defrauded the court, reasoning that, because “it is fraud on the court, the motion may be made at any time.” In one filing, Ailer also contended opposing counsel had been sufficiently notified of his filings, had not responded, and had therefore admitted his motions’ assertions in accordance with Rule 2(b) of the Uniform District Court Rules, which provided that “failure to file an answer brief by the opposing party (MSF) within the time allowed shall be deemed an admission that the motion is well-taken.” These additional filings prompted the District Court to issue a follow-up order on March 6, 2023, reaffirming its denial and ordering the clerk of the court not to accept any further filings from Ailer on the matter. Ailer then filed his notice of appeal with this Court.

¶7 “Our standard of review of a district court’s ruling on a motion pursuant to M. R. Civ. P. 60(b) depends on the nature of the final judgment, order, or proceeding from which relief is sought and the specific basis of the Rule 60(b) motion.” *Reservation Operations Ctr. LLC v. Scottsdale Ins. Co.*, 2018 MT 128, ¶ 7, 391 Mont. 383, 419 P.3d 121 (quoting *Essex Ins. Co. v. Moose’s Saloon, Inc.*, 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451.) “As a general rule, the district court’s ruling is reviewed for abuse of discretion.” *Essex*, ¶ 16. “A district court abuses its discretion if it ‘act[s] arbitrarily without employment of conscientious judgment or exceed[s] the bounds of reason resulting in substantial injustice.’” *Essex*, ¶ 19 (citation omitted).

¶8 Rule 60(b) of the Montana Rules of Civil Procedure enables litigants to request relief from a final judgment on account of:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Such motions “must be made within a reasonable time -- and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.”

M. R. Civ. P. 60(c)(1). However, the residual clause of Rule 60 “allows a judgment to be set aside at any time if a party has perpetrated a fraud upon the court.” *Falcon v. Faulkner*, 273 Mont. 327, 330, 903 P.2d 197, 199 (1995); M. R. Civ. P. 60(d)(3).

¶9 On appeal, Ailer contends that one of his motions constituted a “motion for relief on a violation of the [Montana Rules of Civil Procedure],” which “has no time limits” because under Rule 60(d)(3), in instances of fraud or other misconduct directed toward the court, a motion for relief may be made at any time. He also contends his assertions of the State Fund’s fraud were “well taken” because the State Fund did not respond to his motion. He therefore argues the District Court abused its discretion by denying his motions for relief.

¶10 Given that Ailer waited over six years to move the District Court for relief from its 2016 order releasing his CCJI, the motion’s validity clearly hinges on the existence of a legitimate “fraud upon the court” that would permit the delayed filing. We have previously held that fraud on the court constitutes “only that species of fraud which does or attempts

to subvert the integrity of the court itself, or is fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner in its impartial task of adjudicating cases that are presented for adjudication.” *Falcon*, 273 Mont. at 332, 903 P.2d at 200 (quoting *Salway v. Arkava*, 215 Mont. 135, 695 P.2d 1302 (1985)). “Examples of fraud upon the court include bribery, evidence fabrication, and improper attempts to influence the court by counsel.” *Falcon*, 273 Mont. at 332, 903 P.2d at 200 (citation omitted). “Relief should be denied in the absence of such conduct.” *Falcon*, 273 Mont. at 332, 903 P.2d at 200.

¶11 Despite his oft-repeated assertion of fraud throughout his appellate briefs and numerous district court filings, Ailer never specifically delineates the conduct that constituted “fraud upon the court.” His briefing is convoluted and confusing, and he only generally asserts the State Fund violated the Montana Rules of Professional Conduct by failing to provide “exculpatory” evidence during its application for the release of Ailer’s CCJI, such as the May 31, 2012 report by Agent Poppler. Ailer makes no legally based argument for why this conduct constitutes “fraud upon the court” beyond stating that the State Fund “conceded” it “as the facts and evidence were well taken and undisputed.”

¶12 This line of argument misapplies M. R. Civ. P. 2(c)<sup>3</sup> which, in pertinent part, states: “Failure to file briefs may subject the motion to summary ruling . . . . Failure to file an answer brief by the opposing party within the time allowed shall be deemed an admission that the motion is well taken.” The District Court was not required to grant Ailer’s motions

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<sup>3</sup> This section of the M. R. Civ. P. mirrors that of Rule 2 of the Uniform District Court Rules.

merely because State Fund failed to respond; rather, it retained discretion to rule on the merits of the motion.<sup>4</sup> See *Maberry v. Gueths*, 238 Mont. 304, 309, 777 P.2d 1285 (1989); *In re Marriage of Lundstrom*, 2007 MT 304, ¶ 23, 340 Mont. 83, 172 P.3d 588. Further, as we noted in *State v. Pizzola*, Rule 2 does not “allow a party to obtain a favorable legal ruling on a motion which not only cites no supporting authority from this Court, but fails to cite existing authority from this Court which clearly renders the motion incorrect as a matter of law.” *State v. Pizzola*, 283 Mont. 522, 525, 942 P.2d 709, 711 (1997). Ailer’s assertions relating to “fraud upon the court” in his motions to the district court are unsupported, and State Fund’s failure to respond to those motions does not remedy this issue. Accordingly, we conclude that the District Court did not abuse its discretion because its denial of Ailer’s Rule 60 motion for relief was not arbitrary considering the motions’ vacuous nature.

¶13 Lastly, at this time we decline the State Fund’s request to declare Ailer a vexatious litigant. Though Ailer has substantially burdened both the court system and parties through his myriad cases and filings, in the exercise of abundant patience we decline to sanction Ailer. However, Ailer is warned that further such actions may result in a declaration that he is a vexatious litigant.

¶14 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents

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<sup>4</sup> State Fund asserts that its failure to respond to Ailer’s motions was a product of improper service, but we need not consider this issue.

no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent. 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.

¶15 Affirmed.

/S/ JIM RICE

We concur:

/S/ MIKE McGRATH  
/S/ LAURIE McKINNON  
/S/ INGRID GUSTAFSON  
/S/ DIRK M. SANDEFUR