Montana Law Review

Volume 72
Issue 1 *Winter 2011*

Article 9

1-2011

When Due Process Is Due: Implications of Logerstedt v. Taylor and the Supreme Court's Contravention of the Rules of Appellate Procedure

Travis B. Dye
Attorney, Kalkstein, Johnson & Dye, P.C.

Helia Jazayeri
Attorney, Kalkstein, Johnson & Dye, P.C.

Recommended Citation
Travis B. Dye and Helia Jazayeri, *When Due Process Is Due: Implications of Logerstedt v. Taylor and the Supreme Court's Contravention of the Rules of Appellate Procedure,* 72 Mont. L. Rev. 171 (2011).
Available at: https://scholarworks.umt.edu/mlr/vol72/iss1/9

COMMENT:

WHEN DUE PROCESS IS DUE: IMPLICATIONS OF *LOGERSTEDT V. TAYLOR* AND THE SUPREME COURT'S CONTRAVENTION OF THE RULES OF APPELLATE PROCEDURE

Travis Dye* & Helia Jazayeri**

"Whatever disagreement there may be as to the scope of the phrase 'due process of law,' there can be no doubt that it embraces the fundamental conception of a fair trial, *with opportunity to be heard.*"
—Justice Oliver Wendell Holmes[1]

I. INTRODUCTION

The integrity of the appellate process depends on adherence to rules of procedure promulgated by the Montana Supreme Court. The Montana Supreme Court requires litigants to act in accordance with the Appellate Rules of Procedure, fulfilling its dual role as drafter and enforcer. The Rules facilitate the operation of the court system and ensure that attorneys and litigants participate in the legal system on equal footing.

This comment argues the Montana Supreme Court contravened its own rules by issuing a writ of supervisory control in the case of *Logerstedt v. Taylor* without allowing the opposing party to respond to the petition.[2] In its zealous exercise of supervisory control, the Court violated its own Rules of Appellate Procedure when it intervened in a case that in no way satisfied the requirements for a writ. The Supreme Court granted the Petitioner relief pursuant to its supervisory control powers.[3] Under the facts of the case, however, granting relief was not only a violation of the Rules of Appellate Procedure, it was a surprising break from the Court's tradition of protecting due-process rights.

Under Rule 14(3), the Supreme Court may issue a writ only upon a finding that the district court has caused a gross injustice, the issues before the Court are constitutionally significant on a statewide level, or the lower

---

* Travis Dye is a partner at Kalkstein, Johnson & Dye P.C., the firm that defended Dr. Clark Taylor in *Logerstedt v. Taylor*.

** Helia Jazayeri is an associate attorney at Kalkstein, Johnson & Dye P.C. She was an intern at the firm when it defended Dr. Clark Taylor in *Logerstedt v. Taylor*.

1. *Frank v. Mangum*, 237 U.S. 309, 347 (1915) (Holmes, J., dissenting) (emphasis added).

2. Or., *Logerstedt v. Dist. Ct. of the 4th Jud. Dist.* at 1–2 (Mont. Nov. 2, 2009) (No. OP 09–0587) (Montana Supreme Court filings are available at Mont. Sup. Ct. Pub. View Docket, http://supremecourtdocket.mt.gov, *select* Closed Case Search, *search* by case number OP 09–0587).

3. *Id.* at 2.

court denied a substitution of judge in a criminal case and the party seeking the writ does not have an adequate remedy on appeal.[4] The Supreme Court made no such findings in *Logerstedt* and failed to discuss the Rule 14(3) factors at all. Coupled with the Court's refusal to allow a response from the party opposing the writ, the Court itself caused an injustice for which there was no remedy.

This comment discusses the implications of a decision which essentially ignored the Rules of Appellate Procedure. Part II details the background and procedural history of *Logerstedt*. Part III examines the due process concerns raised when the Court grants relief to one party without allowing the opposing party to respond. Part III also discusses the historical purpose of the writ of supervisory control as a mechanism to safeguard due process and examines the Montana Supreme Court's dual role as the drafter and enforcer of the Appellate Rules of Procedure. Part IV explains why granting a writ of supervisory control was inappropriate in *Logerstedt*. Part V provides concluding remarks.

II. Procedural History

Logerstedt was a medical-malpractice case that stemmed from a small scar on the corner of Petitioner Logerstedt's mouth. Initially, Logerstedt saw Dr. Taylor for treatment of an overbite condition.[5] Dr. Taylor performed oral surgery to reposition Logerstedt's jaw and successfully resolved the condition. The success of the surgery was never disputed.

Logerstedt filed suit alleging Dr. Taylor negligently "lacerated" his lip during oral surgery.[6] Dr. Taylor's medical records stated, "[D]ue to retraction, a separation of the right commissure of the mouth had [occurred]." While each party disputed the other's characterization of the injury, it was undisputed that the subject of the suit was a scar approximately one-and-a-half centimeters long and two millimeters wide.[7]

Approximately one year after Logerstedt filed suit, and over Dr. Taylor's objection, the district court granted Logerstedt's motion to amend his complaint to add a claim for punitive damages. Logerstedt claimed Dr. Taylor intentionally concealed the laceration and misrepresented its cause to Logerstedt's mother.[8] After discovery closed, Dr. Taylor moved for par-

4. Mont. R. App. P. 14(3)(a)–(b).

5. Def.'s Br. Supporting Mot. in Limine, *Logerstedt v. Taylor* at 1 (4th Jud. Dist. Mont. Sept. 18, 2009) (No. DV 08–921) (copies of district court filings are on file with the *Montana Law Review*).

6. Compl., *Logerstedt v. Taylor* at 2 (July 23, 2008).

7. Def.'s Br. Supporting Mot. in Limine, *Logerstedt v. Taylor* at 2.

8. Amend. Compl., *Logerstedt v. Taylor* at 2 (June 30, 2009).

tial summary judgment on the punitive damages claim.[9] Dr. Taylor argued there was no factual or legal basis for Logerstedt's claim for punitive damages because Logerstedt had not sustained any actual damages as a result of the alleged concealment. After considering arguments from both parties, the district court granted Dr. Taylor's motion for partial summary judgment, concluding that Logerstedt failed to establish that a genuine issue of material fact existed to warrant presenting the claim for punitive damages to the jury.[10]

On October 30, 2009—six days before trial— Logerstedt filed an application for writ of supervisory control and stay of trial.[11] Logerstedt asked the Supreme Court to vacate the district court's order granting partial summary judgment and permit him to allege punitive damages at trial.[12] On November 2, 2009, the Supreme Court exercised its supervisory control powers and vacated the district court's order, thereby allowing Logerstedt to proceed to trial with his claim for punitive damages.[13] Dr. Taylor immediately filed an emergency motion to vacate the Supreme Court's order, arguing that Rule 14(7) requires the Supreme Court to give him an opportunity to respond.[14] The Supreme Court summarily denied Dr. Taylor's motion to vacate, without providing its reasoning.[15] In refusing to allow Dr. Taylor the opportunity to respond, not only did the Supreme Court violate Rules of Appellate Procedure 14(3) and 14(7),[16] it also deprived Dr. Taylor of his fundamental right to due process.

III. Due Process

Article II, § 17 of the Montana Constitution provides that "[n]o person shall be deprived of life, liberty, or health without due process of law." Due process is defined as the conduct of legal proceedings according to rules that protect private rights, including the right to a fair hearing before a tribunal with the power to decide the case.[17] Due-process violations pose a

9. Op. & Or. Granting Pl.'s Mot. to Amend Compl. & Or. Setting Tr. & Pretrial Conf., *Logerstedt v. Taylor* at 1–6 (June 10, 2009) [hereinafter Op. & Or. Granting Pl.'s Mot. to Amend Compl.].

10. Op. & Or. Granting Def.'s Mot. for P.S.J. on Punitive Damages Claim & Denying as Moot Def.'s Mot. for a Protective Or. Regarding Fin. Info. & Pl.'s Mot. to Compel Def's. Fin. Recs., *Logerstedt v. Taylor* at 5 (Oct. 29, 2009) [hereinafter Op. & Or. Granting Def.'s Mot. for P.S.J.].

11. Pl.'s Application for Writ of Supervisory Control & Stay of Jr. Tr., *Logerstedt v. Dist. Ct. of the 4th Jud. Dist.* at 8–9 (Oct. 30, 2009).

12. *Id.*

13. Or., *Logerstedt v. Dist. Ct. of the 4th Jud. Dist.* at 2.

14. Clark Taylor's Emerg. Mot. to Vacate Or. Granting Supervisory Control, *Logerstedt v. Dist. Ct. of the 4th Jud. Dist.* at 1–2 (Nov. 2, 2009).

15. Or, *Logerstedt v. Dist. Ct. of the 4th Jud. Dist.* at 1.

16. Mont. R. App. P. 14(3) governs the writ of supervisory control; Mont. R. App. P. 14(7) governs the procedural aspects of filing a writ of supervisory control.

17. *Black's Law Dictionary* 575 (Bryan A. Garner ed., 9th ed., West 2009).

constitutional challenge for which the Montana Supreme Court has plenary review.[18] When the district court denies a litigant his due process, the litigant can appeal to the Supreme Court for recourse. Indeed, the Montana Supreme Court has the duty and the power to remedy due process violations and it does so routinely.

Given the nature of Montana's judiciary in terms of size and the absence of an intermediate appellate court, the Supreme Court is generally the final protector of due process and other fundamental rights. The Supreme Court's deprivation of a litigant's due process rights, therefore, is of particular concern since the injured party is left with no remedy or recourse at law.

The very evolution of the writ of supervisory control is a product of the Montana Supreme Court's tradition of safeguarding litigant due-process rights. This unique mechanism protected parties during an era of rampant corruption in Montana's judiciary.[19] This protection developed in a series of Montana Supreme Court cases starting with *State ex rel. Whiteside v. District Court of First Judicial District*,[20] and culminated with inclusion in Montana's 1972 Constitution.[21]

A. *The Creation of the Writ of Supervisory Control as a Safeguard of Due Process*

The Montana Supreme Court "has general supervisory control over all other courts."[22] Montana's writ of supervisory control is a common-law creation of the Supreme Court, declared in the 1990s, "to control the course of litigation in the inferior courts."[23] Designed as an extraordinary remedy to combat corruption in the district courts, the writ provided a mechanism that allowed the Supreme Court to intervene in the proceedings below to ensure the integrity of the judicial system and to enforce a litigant's right to present its case before a neutral body.[24]

The writ is "extraordinary" because it permits the high court to interject in lower-court proceedings at any stage of the suit. Unlike other common-law writs, such as writs of mandamus, Montana's writ of supervisory

18. *In re Baker*, 194 P.3d 613, 614 (Mont. 2010).

19. For an in-depth historical analysis of the writ of supervisory control and writ practice in Montana, see Howell, *infra* n. 20.

20. Larry Howell, *"Purely the Creature of the Inventive Genius of the Court": State ex rel. Whiteside and the Creation and Evolution of the Montana Supreme Court's Unique and Controversial Writ of Supervisory Control*, 69 Mont. L. Rev 1, 4 (2008) (citing *State ex rel. Whiteside v. Dist. Ct. of 1st Jud. Dist.*, 63 P. 395, 400 (Mont. 1900)).

21. Mont. Const. art. VII, § 2(2).

22. *Id.*

23. Howell, *supra* n. 21, at 4 (citing *State ex rel. Whiteside*, 63 P. at 400).

24. *Id.* at 4–5.

control provides the Supreme Court unfettered access to the lower courts and grants it authority to intervene whether or not the district court has rendered a final judgment.[25]

The 1972 Constitution bolstered the Court's authority for rule-making and writ practice. Even though the Supreme Court has exercised its writ of supervisory control powers for over a century under the common law, the 1972 Constitution specifically includes a provision that gives the Supreme Court supervisory control over inferior courts.[26] The Court is now armed with a constitutional mandate to "supervise" inferior courts. Indeed, the writ does facilitate the operation of the court system because it affords the Supreme Court a degree of flexibility necessary for it to effectively oversee lower courts and interject when extraordinary issues arise, without having to wait for the case to come before it on appeal from a final judgment.

The Court's expansion of writ practice in recent years, however, has altered the purpose of the writ. Specifically, when the Court issues a writ in cases without facts to satisfy the requisite gross injustice or other emergency factors required under Rule 14(3), it effectively minimizes the value and the historical purpose of the writ— a last resort protection for litigants who cannot receive adequate relief from an appeal.

B. The Rules of Appellate Procedure and the Writ of Supervisory Control

Montana's 1972 Constitution confers rule-making authority upon the Montana Supreme Court.[27] The Montana Rules of Appellate Procedure govern all legal proceedings before the Court.[28] Because the rules apply only at the appellate level, the Supreme Court is also the entity that enforces the rules it drafted. Thus, not only does the Montana Supreme Court create the rules that govern proceedings, it is also the sole entity that enforces them.

Once the Supreme Court grants a petition for supervisory control pursuant to Rule of Appellate Procedure 14(3),[29] it then exercises original jurisdiction over that particular issue.[30] Rule 14(3) provides:

> The Supreme Court has supervisory control over other courts and may, on a case-by-case basis, supervise another court by way of a writ of supervisory control. Supervisory control is an extraordinary remedy and is sometimes justified when urgency or emergency factors exist making the normal appeal

25. *Id.* (citing *State ex rel. Whiteside*, 63 P. at 400).
26. Mont. Const. art. VII, § 2(2).
27. Mont. Const. art VII, § 2(3). The Legislature does, however, retain veto power over the rules.
28. Mont. R. App. P. 1(2).
29. Mont. R. App. P. 14(3) (formerly Mont. R. App. P 17(a)).
30. Mont. Const. art. VII, § 2(1).

process inadequate, when the case involves purely legal questions, and when one or more of the following circumstances exist:

(a) The other court is proceeding under a mistake of law and is causing a gross injustice; or

(b) Constitutional issues of state-wide importance are involved; or

(c) The other court has granted or denied a motion for substitution of a judge in a criminal case.[31]

Appellate Rule of Procedure 14(7) outlines the procedural requirements associated with the writ of supervisory control: "Upon the filing of a petition, the Supreme Court may order that a summary response be filed, or the Supreme Court may dismiss the petition without ordering a response."[32] The plain language of this rule is clear. Once a party files a petition for a writ of supervisory control, the rule provides the Supreme Court only two options. The Court may either (1) order a summary response (from the opposing party) or (2) dismiss the petition. There is no third option or hybrid option that allows the Court to grant the petitioner relief without allowing the opposing party an opportunity to respond—as it did in *Logerstedt*. Indeed, nothing in Rule 14(3) permits the Supreme Court to grant relief in a petition *without* giving the opposing side an opportunity to respond. Yet that is precisely what the Supreme Court did. In doing so, the Court violated a clear rule that precludes the Court from granting supervisory control unless the opposing party has had an opportunity to respond.

The rationale behind Rule 14(7) is simple: the Supreme Court should not take action that negatively affects a party without first hearing from that party. The district court ruled against *Logerstedt* on the punitive damage issue, but it did so only after extensive briefing and argument from both sides. Contrarily, the Supreme Court, using its supervisory control powers, reversed the district court but did so with an incomplete record that lacked Dr. Taylor's arguments or briefing. Logerstedt included with his Petition only his own prior briefing and the district court's orders.[33] In other words, the Supreme Court had only Logerstedt's argument when it decided that the district court had improperly granted summary judgment. The Court never heard Dr. Taylor's "side of the story" before it reinstated a punitive-damages claim that had been dismissed by the district court. The Court's decision left Dr. Taylor less than two days to prepare to defend against a punitive damages claim at trial.

---

31. Mont. R. App. P. 14(3) (formerly Mont. R. App. P. 17(a)).

32. Mont. R. App. P. 14(7)(a).

33. Logerstedt's Petition contained the following six exhibits from *Logerstedt v. Taylor* (4th Jud. Dist. Mont.) (No. DV 08-932): (A) Op. & Or. Granting Def.'s Mot. for P.S.J.; (B) Compl. & Demand for Jury Tr.; (C) Op. & Or. Re: Pl.'s Mot. to Amend Compl.; (D) Pl.'s Br. Opp. Def.'s Mot. for S.J. (Oct. 2, 2009); (E) Pl.'s Br. in Opp. to Def's. Mot. in Limine (Sept. 9, 2009); (F) Or. Denying Def.'s Mot. in Limine (Oct. 28, 2009) (copies on file with the *Montana Law Review*).

The outcome in Logerstedt was not a necessary outcome. Though Logerstedt filed his petition just days before trial, the Supreme Court's hands were not tied. Had the Court believed Logerstedt's petition potentially had merit, the Rules of Appellate Procedure gave it the ability to stay the proceedings in the district court while it considered Logerstedt's argument.[34] Indeed, Logerstedt asked for a stay of the district-court proceedings.[35] In light of this, it is unclear why the Court took the drastic step of exercising supervisory control without first giving Dr. Taylor an opportunity to respond—an action that the Rules of Appellate Procedure do not permit.

IV. An Inappropriate Application of the Writ of Supervisory Control

A cardinal rule of appellate procedure is the final-judgment rule.[36] It prohibits an appeal from an interlocutory order that determines preliminary or subordinate issues, but is not a court's final decision on the case.[37] An order granting partial summary judgment is specifically listed as one that is not appealable until after final judgment.[38] Here, the district judge granted partial summary judgment—an interlocutory ruling which Logerstedt could not appeal until trial concluded. By granting supervisory control, the Court allowed Logerstedt to bootstrap an interlocutory order to a petition for supervisory control and effectively bypass the final judgment rule.

Writs of supervisory control are not creatures of judicial discretion. As a threshold matter, for the Court to assume original jurisdiction, it must determine whether certain elements are satisfied. The Court is otherwise without authority to assume jurisdiction to intervene in a lower court's proceedings. Writs are appropriate only when urgent or emergency factors exist that make the normal appeal process inadequate, the issue is purely legal, and one of the following factors exists: (1) the court is proceeding under a mistake of law and is causing a gross injustice; (2) constitutional issues of major statewide importance are involved; or (3) the other court has granted or denied a motion for substitution of a judge in a criminal case.[39] Thus, the plain language of Rule 14(3) establishes a three-part test that must be satisfied before the Court may exercise supervisory control.

---

34. Mont. R. App. P. 14(7)(c).
35. Application for Writ of Supervisory Control & Stay of Jury Tr., *Logerstedt v. Taylor* at 8–9.
36. Mont. R. App. P. 6(1).
37. Mont. R. App. P. 6(5)(f); Mont. R. App. P. 4(1)(b).
38. Mont. R. App. P. 6(5)(b).
39. Mont. R. App. P. 14(3) (emphasis added).

In *Logerstedt*, the Court assumed jurisdiction, but it did so without specifically establishing even one of the requisite factors. Acknowledging the writ of supervisory control as an extraordinary remedy, the Court said:

> This Court is reluctant to grant writs of supervisory control, which are extraordinary writs, and especially reluctant to do so before ordering a response from the Respondent district court and the opposing party in the underlying litigation. However, after carefully reviewing the petition and supporting documents, we deem that it is appropriate in this *singular* instance to grant the writ of supervisory control, in part.
>
> . . .
>
> Under the *unique circumstances* presented by this case, we conclude that the requirements of M.R.App.P. 14(2)(a) have been met and deem it appropriate to order the portions of the District Court's order on summary judgment which dismiss Logerstedt's claim for punitive damages and prohibits testimony concerning punitive damages be vacated.[40]

This statement raises more questions than it answers. What legal issue in *Logerstedt* did the Court deem significant enough to justify making an exception in this "singular" instance? And what "unique circumstances" existed? *Logerstedt* presented no extraordinary circumstances, and the Supreme Court's order mentions none. Nothing about this ordinary medical malpractice claim or the district court's issuance of an order for partial summary judgment satisfied the requisite elements for a writ. The district court's order was not based on a mistake of law that caused gross injustice. Likewise, *Logerstedt* did not involve constitutional issues of statewide importance, nor did the facts establish any sort of urgent or emergency situation. So, why did the Supreme Court allow Logerstedt to bypass the appeals process in this case, when other litigants faced with unfavorable interlocutory rulings must abide by the rules and appeal after conclusion of the district court proceedings?

Reference to Logerstedt's Petition does not provide any assistance in discovering what unique circumstances caused the Supreme Court to grant supervisory control. Logerstedt's Petition did not discuss the factors for granting supervisory control. Rather, the sole focus of Logerstedt's argument was that the district court had erroneously granted partial summary judgment on punitive damages, a claim for which Logerstedt had an adequate remedy on appeal. The entirety of Logerstedt's attempt to satisfy the Rule 14(3) factors was this statement: "If a writ of supervisory control is not granted a gross injustice to Logerstedt will occur."[41] Logerstedt did not expound on this claim until his conclusion when he stated:

---

40. Or., *Logerstedt v. Dist. Ct. of the 4th Jud. Dist.* at 1–2 (emphasis added). The Court's citation to Rule 14(2)(a) instead of Rule 14(3)(a) appears to be a typographical error.

41. Application for Writ of Supervisory Control & Stay of Jury Tr., *Logerstedt v. Taylor* at 2.

> It will be a waste of time and money, not just to Logerstedt, but for Taylor and the taxpayers of Missoula County to hold a trial and then have the outcome later reversed on appeal for these clear legal mistakes contained in the District Court's Orders, which are the subject of this Application and Motion to Stay.[42]

Thus, Logerstedt merely contended that supervisory control was necessary because he would otherwise incur expenses. He made no effort to establish that he did not have an adequate remedy on appeal, nor did he attempt to establish the other requirements set forth in Rule 14(3). Despite these failures, the Court granted his petition and exercised supervisory control.

Regardless of the merits of his position, Logerstedt did not establish that his situation was different from that of any party in any other case who failed to prevail on a pretrial motion. Logerstedt's case for supervisory control rested entirely on his claim that granting supervisory control was necessary to avoid the expense associated with a trial and appeal. However, the mere fact that a subsequent appeal may result in reversal and retrial cannot justify exercising the extraordinary remedy of supervisory control. If that is the standard, supervisory control would be appropriate any time a district court granted or denied a motion for partial summary judgment or a motion excluding evidence, as reversal of the decision on appeal could result in a retrial that would cause the parties to incur significant expenses. In essence, a procedure meant to be an extraordinary remedy would become the ordinary remedy, and the exception would become the rule.

The Supreme Court's action in *Logerstedt* becomes even more convoluted when considering that less than one month earlier, the Court refused to grant supervisory control when a nearly identical argument was raised. In *Stevens v. Montana Fourth Judicial District Court*, Stevens sought supervisory control after the district court denied her motion to amend her complaint to include a claim for punitive damages.[43] Stevens argued that "if she prevails at trial on the issue of liability and then on appeal from the trial court's denial of her motion to amend, then she will be forced to retry her entire case to a second jury on the issue of punitive damages, at a great cost and waste of time and resources."[44] The Court denied Stevens' Petition after concluding: "The discretionary decision of the District Court to deny the motion to amend the complaint is not a mistake of law which

42. *Id.* at 8–9.

43. Or., *Stevens v. 4th Jud. Dist. Ct.* (Mont. Oct. 7, 2009) (No. OP 09–0527) (available at Mont. Sup. Ct. Pub. View Docket, http://supremecourtdocket.mt.gov, *select* Closed Case Search, *search by case number* OP 09–0527).

44. *Id.* at 2.

moves the Appellate Court to grant extraordinary relief, and *we are not persuaded that Stevens is without an adequate remedy on appeal.*"[45]

Thus, less than one month before it exercised supervisory control in *Logerstedt*, the Supreme Court had concluded that the expenses associated with a trial, appeal, and potential retrial did not render Steven's remedy on appeal inadequate. Why the Supreme Court decided *Stevens* and *Logerstedt* differently is a mystery. Suffice it to say, however, inconsistent decisions such as these leave attorneys in Montana bewildered as to when supervisory control is appropriate and are likely to increase the number of petitions the Court must consider.

Improper application of the writ in *Logerstedt* recalls former Chief Justice Gray's warnings about the needless expansive use of the writ. In *Lane v. Montana Fourth Judicial District Court,*[46] the issue before the Court on an application for writ was *res judicata.*[47] Lane claimed he was forced to re-defend against a claim previously settled in another district court.[48] The Court agreed with Lane and vacated the district court's denial of summary judgment order.[49] Chief Justice Gray argued in her dissent that issuing a writ was inappropriate because the district court had caused no gross injustice and Lane had an adequate remedy on appeal.[50] She declared that such expansive application of the writ is problematic and renders the notion of "gross injustice" meaningless:

> A "gross injustice" apparently now means only an erroneous—or potentially erroneous—ruling or an alleged pretrial abuse of discretion which, if not corrected by this Court's intervention, will permit the proceedings in the trial court to proceed in their normal course with their associated delays and expenses. In the future, will any rational attorney refrain from petitioning for supervisory control on any non-appealable ruling at any stage in trial court proceedings? On what grounds will the Court ever find reason to deny supervisory control? And how in the world does such an approach comport with either the trial court's general authority to control the proceedings before them or our primary role as an appellate court?[51]

In light of the Court's action in *Logerstedt*, it appears Chief Justice Gray's warning has had little effect.

---

45. *Id.* (emphasis added).

46. *Lane v. Mont. 4th Jud. Dist. Ct.*, 68 P.3d 819 (Mont. 2003) (Gray, C.J., dissenting).

47. *Id.* at 822.

48. *Id.*

49. *Id.* at 825.

50. *Id.*

51. *Id.* at 826.

V. Concluding Remarks

It is axiomatic that due process is essential to a just legal system. As the United States Supreme Court has stated, "[t]he fundamental requisite of due process of law is the opportunity to be heard."[52] To reach its result in *Logerstedt*, the Montana Supreme Court undermined this basic premise by not allowing Dr. Taylor an opportunity to respond in the writ proceedings, a clear violation of the procedural protocols required under Appellate Rule of Procedure 14(7). The Montana Supreme Court is known for demanding strict adherence to its Rules of Appellate Procedure, and it routinely sanctions violations.[53] Yet in this case, it was the Court that violated its own rules, leaving Dr. Taylor with no recourse and no option to appeal.

52. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914).

53. *See e.g Yetter v. Kennedy*, 571 P.2d 1152, 1156 (Mont. 1997) (failure to follow Rules 9(b) and 10(a) and transmit a lower court transcript to the Supreme Court demonstrates "a complete lack of adherence to the Montana Rules of Appellate Procedure" leaving the Court "unable to decide the issues"); *In re Appeals Improperly Certified as Final Judm. Entered Pursuant to Mont. R. Civ. P. 54(b)*, 178 P.3d 694, 695 (Mont. 2007) (chiding parties for filing appeals or cross appeals prior to obtaining final judgment certification from the district court); *Roy v. Neibauer*, 610 P.2d 1185, 1187 (Mont. 1980) (dismissing for failure to satisfy certification rules).