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NOTES

DEFAULT JUDGMENT IN MONTANA: THE COST OF INEXCUSABLE NEGLECT OR THE DEATH OF TRIAL ON THE MERITS?

Sara F. Tappen*

I. INTRODUCTION

Amidst moving boxes brimming with carefully drafted documents, a legal assistant stands bewildered by all that has transpired in the past weeks. Her sole living brother lies partially paralyzed in a hospital bed—after nearly choking to death, lack of oxygen caused him to lapse into a coma from which he emerged with partial brain damage.[1] Her mind races as she reviews the arrangements she must make for his rehabilitation. At the same time, her thoughts wander to the report she just received from her own doctor: she survived breast cancer two years ago, but now the enemy is back, this time as a melanoma-type growth on her leg.[2] She too will require medical treatment in the days ahead. She feels the room spinning and lowers herself to rest on the boxes. Her employer's law practice has had to relocate twice in the past six months due to the demolition of their previous office building.[3]

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1. Br. of Appellant at 4, *Matthews v. Don K Chevrolet*, 115 P.3d 201 (Mont. 2005).
2. *Id.*
3. *Id.* at 3–4; *Matthews v. Don K Chevrolet*, 115 P.3d 201, 201–04 (Mont. 2005).

Reorganizing the entire office will complete the final phase of their move.

Such were the circumstances under which a legal assistant misfiled the wrongful discharge complaint which led to a default judgment being entered against Don K Chevrolet, her employer's client.[4] One might intuitively identify such circumstances as the sort which lead to the unfortunate "mistake" spoken of in Rule 60(b)(1) of the Montana Rules of Civil Procedure.[5] The Rules provide for setting aside default judgment in unique circumstances[6] because the entire purpose of the Rules is "to secure the *just*, speedy, and inexpensive determination of every action."[7] However, in *Matthews v. Don K Chevrolet*, the Montana Supreme Court rejected the turmoil and subsequent mistake of defense counsel's legal assistant as excusable neglect for failing to answer Krist Matthews's complaint, and declined to set aside the default judgment.[8] Instead, the Court pointed to, and relied heavily upon, the existence of a letter for which the District Court lacked proper record.[9] The letter, allegedly written by the plaintiff's lawyer, Chisholm, ostensibly advised defendant's counsel, Jack Quatman, that a hearing on default judgment and damages would be held the following week. Quatman denied ever receiving the communication from Chisholm, yet beyond the excusable misfiling error, the Court's decision professes to hinge on the receipt of this undocumented letter.[10]

This note will first review the early proceedings in this wrongful termination action and the Montana Supreme Court's holding on each of the important issues. In its second part, the note will discuss the interpretation and application of the Rules of Civil Procedure relevant to the issue of default judgment—Rules 55(c)[11]

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4. *Id.*

5. Mont. R. Civ. P. 60(b). The relevant part of the statute reads:

> On motion and upon such terms as are just, the court may relieve a party or a legal party's representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . . . .

Id.

6. *Id.*

7. Mont. R. Civ. P. 1 (emphasis added).

8. *Matthews*, 115 P.3d at 204.

9. *Id.* at 207–08 (Warner, J., dissenting).

10. *Id.* at 204–05 (majority).

11. Mont. R. Civ. P. 55(c). The relevant part of the statute reads:

> For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

Id.

and 60(b)[12]—in addition to reviewing Montana precedent relevant to the interpretation of these rules in situations parallel to the narrow facts in *Matthews v. Don K Chevrolet*. Lastly, the note will analyze the Court's reasoning and decision in affirming the default judgment entered against Don K Chevrolet, and the impact of this pronouncement on prospective defendants in Montana.

II. *Matthews v. Don K Chevrolet*

A. *Facts*

Krist Matthews was one of five employees who challenged the termination of their employment by Don K Chevrolet. Wade Fish, represented by attorney Dean Chisholm, was the first of the terminated employees to file suit.[13] Matthews and three other plaintiffs attempted to consolidate their claims into one action against Don K Chevrolet by moving to join Fish's action as additional parties. Don K Chevrolet opposed the motion for consolidation and the District Court denied it. Each plaintiff was instead required to file an individual action.[14] All five plaintiffs eventually retained Chisholm to represent them,[15] and Quatman represented Don K Chevrolet in all of the individual actions.[16]

Three of the four plaintiffs who had attempted to join the Fish lawsuit filed individually in July 2003.[17] Matthews, however, did not file his complaint until September 11, 2003.[18] On October 14, 2003, without conferring with Don K Chevrolet, Quatman signed the acknowledgement of service for Matthews's complaint. Quatman then gave it, along with the summons and the complaint, to his assistant. She mailed the acknowledgement to Chisholm, who in turn filed it with the District Court.[19] However, Quatman's legal assistant, due to personal and professional diffi-

12. Mont. R. Civ. P. 60(b). The discussion here will be limited to subsections (1) and (6), which read:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . . . or (6) any other reason justifying relief from operation of the judgment.

Id.

13. *Matthews*, 115 P.3d at 202.
14. *Id.* at 203.
15. *Id.* at 202–03.
16. *Id.* at 203.
17. *See* Br. of Appellant at 3, *Matthews v. Don K Chevrolet*, 115 P.3d 201 (Mont. 2005).
18. *Matthews*, 115 P.3d at 203.
19. *Id.*

culties,[20] failed to log the acknowledgement into the computer and calendar the answer's due date. She also failed to open a file for Matthews and set a conference date with the client. Instead, she inadvertently misfiled Matthews's summons and complaint in Wade Fish's file.[21]

On November 7, 2003, when no answer had been filed within the mandatory twenty days, Chisholm filed a praecipe for default which the Clerk of Court entered on the same day. The court set a hearing on entry of default judgment and damages for December 11, 2003, at Chisholm's request, and notice of the hearing was filed with the Clerk of Court.[22]

Here, the parties' stories diverge. In his appellate response brief, Chisholm reported mailing a letter to Quatman on December 4, 2003, in which he stated his discontentment over having taken the default, adding that he was "not entirely morose either" since "your client said he wanted to play hardball and requested Rule 11 sanctions against me."[23] The letter allegedly gave notice of the upcoming hearing.

Defense counsel denied ever receiving the letter. In fact, Quatman told the Court that he had no idea a default had been entered against his client until a month later.[24] Consequently, no one attended the hearing on behalf of Don K Chevrolet, and a default judgment was entered against the defendant for $185,000, including a startling $88,608 punitive damage award.[25]

Quatman testified by affidavit that he learned of the misfiling of the Matthews complaint on January 5, 2004, when he performed a routine inventory of his active files at the end of the quarter.[26] Upon discovering that the Matthews complaint had been misfiled in the Fish file, Quatman immediately proceeded to the courthouse where, after speaking with the Clerk of Court, he first discovered default had been entered against his client.[27]

On January 7, 2004, within twenty-six days of entry of the default judgment, Quatman filed a motion to set the judgment

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20. *Id.* at 201, 204; *see also* Br. of Appellant at 3–4, *Matthews v. Don K Chevrolet*, 115 P.3d 201 (Mont. 2005).

21. *Matthews*, 115 P.3d at 203.

22. *Id.*

23. *Id.*

24. *Id.* at 207 (Warner, J., dissenting).

25. *Id.* at 208.

26. Br. of Appellant at 4–5, *Matthews v. Don K Chevrolet*, 115 P.3d 201 (Mont. 2005).

27. *Matthews*, 115 P.3d at 207 (Warner, J., dissenting).

aside.[28] In his brief on the motion, Quatman explained the circumstances surrounding the mistake that had occurred in his office, and the reason his client had made no appearance at all in the matter.[29] He did not mention having received any letter from Chisholm regarding the hearing that had taken place.

Chisholm filed a response brief and appended a copy of the letter he said he sent to Quatman's office. Only then, in his reply brief, did Quatman first address the letter, stating: "Counsel has referred to a letter which he sent to the office noticing the default hearing date. That letter was never received at this office. Had it been received, I would have immediately filed a motion to set aside the default and I most definitely would had [sic] been at the court hearing."[30]

To make matters worse, the district court failed in its own recordkeeping and did not set a date for a hearing on Quatman's motion to set aside the default.[31] The district court had not even considered whether Don K Chevrolet's counsel had actually received the letter and notice before the Montana Supreme Court received the appeal.[32] The district court acknowledged that its mistake in calendaring the case had resulted in the denial of the motion not by virtue of the district court's discretion in ruling on this matter, but by failure of the court to properly exercise jurisdiction in ruling on the defendant's motion.[33] The district court went so far as to prepare a "Notice of Denial" acknowledging the error and its failure to rule on the motion.[34] The denial of the motion at the district court level thus occurred by operation of law, and not by the lower court having exercised discretion at all.[35]

B. Holding

The Montana Supreme Court held that the slightest abuse of discretion on the part of the district court would warrant reversal

28. *Id.* at 203.

29. *See* Br. of Appellant at 3–5, *Matthews v. Don K Chevrolet*, 115 P.3d 201 (Mont. 2005).

30. *Matthews*, 115 P.3d at 207 (Warner, J., dissenting).

31. *Id.*

32. *Id.*

33. *Id.* at 207–08; *see also* Mont. R. Civ. P. 60(c). The relevant part of the statute reads: ". . . if the court shall fail to rule on the motion within the 60 day period, the motion shall be deemed denied."

34. *Matthews*, 115 P.3d at 207 (Warner, J., dissenting).

35. *Id.*

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in this case.[36] However, the majority held that the denial of Don K Chevrolet's motion to set aside the entry of default judgment and the default judgment itself did not constitute a slight abuse of discretion on the part of the district court.[37] The majority held that Quatman had "ample opportunity to answer Matthews's complaint,"[38] and the lack of attention to the complaint constituted "a serious disregard of the judicial process and cannot be considered excusable neglect under Rule 60(b)(1) of the Montana Rules of Civil Procedure."[39]

Additionally, the Court held that the lawyer's actions were not grossly negligent, nor did they constitute misconduct under Rule 60(b)(6).[40] The Court held that Don K Chevrolet had notice of Matthews's claim by virtue of the fact that several months earlier Matthews had attempted to join the Fish lawsuit on similar charges of wrongful termination.[41] The Court concluded that the former employer was not "completely innocent in the matter . . . [nor] blameless for purposes of Rule 60(b)(6)."[42] Subsequently, the Court held that any neglect on the part of Quatman should properly be charged to Don K Chevrolet.[43]

III. Default Judgment and the Purpose of the Rules

A. *Competing Policies*

The Montana Rules of Civil Procedure, like their federal counterpart, strive to maintain a balance between competing policies.[44] Through the doctrines of *res judicata* and collateral estoppel, the judicial system promotes finality in litigation.[45] The Montana Supreme Court has noted that "[t]here must be some point at which litigation ends and the respective rights between the parties are forever established."[46]

36. *Id.* at 203 (majority).
37. *Id.* at 206.
38. *Id.* at 204.
39. *Id.* at 205.
40. *Matthews*, 115 P.3d at 205.
41. *Id.* at 206.
42. *Id.*
43. *Id.*
44. *In re Marriage of Hopper*, 991 P.2d 960, 968 (Mont. 1999).
45. *Lawlor v. Natl. Screen Corp.*, 349 U.S. 322, 326 (1955).
46. *In re Marriage of Weber*, 96 P.3d 716, 721 (Mont. 2004).

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On the other hand, default judgments are never favored by the courts,[47] who have always expressed a preference for disposing of a case brought before them by trial on the merits. While Rule 55(c) allows a court to set aside a simple entry of default upon a showing of good cause, Rule 60(b) allows courts liberal discretion in setting aside default judgments when a defendant presents the existence of a meritorious defense.[48] The United States Supreme Court emphasized the role of this latter rule when it held in *Klapprott v. U.S.* that "[Rule] 60(b) strongly indicates on its face that courts no longer are to be hemmed in by the uncertain boundaries of . . . common law remedial tools."[49]

B. *Rule 55(c)*

Under the Montana Rules of Civil Procedure, a court may set aside an entry of default upon a showing of good cause.[50] In determining good cause for setting aside an entry of default, "the court should consider whether: (1) plaintiff will be prejudiced; (2) defendant has a meritorious defense; and (3) defendant's culpable conduct led to the default."[51] Additionally, courts in all jurisdictions have consistently affirmed that "the rules relating to default judgments should be liberally construed *in favor of defendants*, and of the desirability of resolving litigation on the merits, to the end that fairness and justice are served."[52]

C. *Rule 60(b)*

"On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect."[53] The Montana Supreme Court has held that, as a general rule, cases are "to be tried

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47. *Peak Dev., LLP v. Juntunen*, 110 P.3d 13, 15 (Mont. 2005).

48. *Sun Mt. Sports, Inc. v. Gore*, 85 P.3d 1286, 1292 (Mont. 2004).

49. *Klapprott v. U.S.*, 335 U.S. 601, 614 (1949).

50. Mont. R. Civ. P. 55(c).

51. *Marbly v. City of Southfield*, 9 Fed. Appx. 362, 364 (6th Cir. 2001) (unpublished); *see also Cribb v. Matlock Commun., Inc.*, 768 P.2d 337, 339 (Mont. 1989) (citing James W. Moore, *Moore's Federal Practice* vol. 6, § 55.50[1][a] at 55–58.1 (Daniel R. Coquillette et al. eds., 3d ed., Matthew Bender 2006)).

52. *Dougherty v. Surgen*, 518 A.2d 364, 365 (Vt. 1986) (quoting *Desjarlais v. Gilman*, 463 A.2d 234, 237 (Vt. 1983)) (emphasis added).

53. Mont. R. Civ. P. 60(b). *See also* 47 Am. Jur. 2d *Judgments* §§ 664, 684–85 (2006).

on their merits and that judgments by default are not favored."[54] Where a motion to set aside a default judgment is made and "supported by a showing that leaves responsible minds in doubt, courts tend to resolve doubts in favor of the motion, since courts favor a trial on the issues over a default judgment."[55] The Montana Supreme Court has held that in cases where the motion is so promptly made after default has been entered that "[n]o considerable delay to the plaintiff is to be occasioned by permitting a defense on the merits, the court ought to incline to relieve."[56] In *Brothers v. Brothers*, Justice Ranking remarked that "[n]o great abuse of discretion by the trial court in refusing to set aside a default need to be shown to warrant a reversal, for *the courts universally favor a trial on the merits*."[57]

However, there are certain necessary requirements for setting aside a default judgment under Rule 60(b): a party seeking to set aside a default judgment must show both good cause for doing so and the existence of a meritorious defense.[58] The motion must be made within sixty days of entry of the default judgment and must be based on one of the six reasons enumerated in Rule 60(b).[59] Furthermore, relief may not be obtained under 60(b)(6) if it is available under 60(b)(1) through (5).[60]

When a district court fails to rule on a motion to set aside a default judgment within the time provided by the Montana Rules of Civil Procedure, the motion is deemed denied by operation of law.[61] If the district court deliberately exercised its discretion by

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54. *Lords v. Newman*, 688 P.2d 290, 293 (Mont. 1984); *Little Horn St. Bank v. Real Bird*, 598 P.2d 1109, 1110 (Mont. 1979).

55. *Twenty-Seventh St., Inc. v. Johnson*, 716 P.2d 210, 211 (Mont. 1986).

56. *Matthews v. Don K Chevrolet*, 115 P.3d 201, 206 (Mont. 2005) (citing *Benedict v. Spenddiff*, 22 P. 500, 500 (Mont. 1889)) (Warner, J., dissenting). Justice Warner noted that "[w]ith remarkable consistency, the Court has articulated the essence of this principle for 116 years." *Id.*

57. *Brothers v. Brothers*, 230 P. 60, 61 (Mont. 1924) (emphasis added).

58. *First Natl. Bank of Cut Bank v. Springs*, 731 P.2d 332, 335 (Mont. 1987).

59. Mont. R. Civ. P. 60(b). The relevant part of the statute reads:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Id.

60. *Maulding v. Hardman*, 847 P.2d 292, 297 (Mont. 1993).

61. Mont. R. Civ. P. 59(d).

not ruling, the slight abuse of discretion standard of review attaches.[62] However, if a district court has inadvertently allowed time to lapse and has simply lost jurisdiction to rule on the motion, that court has not exercised its discretion at all, raising a question whether the slight abuse standard of review should be applied.[63] The burden still remains on the defaulting party to demonstrate the existence of a meritorious defense and good cause for setting aside the judgment.[64]

D. Default Judgment in Montana Case Law

Among the numerous cases where the Court has reversed the entry of default judgment, two cases on point with the facts in *Matthews* are worthy of further examination: *Blume v. Metropolitan Life Insurance Company*[65] and *Keller v. Hanson*.[66]

In its 1990 *Blume* decision, the Montana Supreme Court set aside a default judgment entered against the defendant Metropolitan Life Insurance Company, where, similar to *Matthews*, the plaintiff had filed a wrongful termination action against her former employer.[67] The defendant had received the plaintiff's summons and complaint and entered it in their mail log, but somehow these documents were never delivered to anyone in a position of authority within the company.[68] The court entered judgment against Metropolitan, and within ten days of learning of the judgment, Metropolitan moved to set aside the default. The district court failed to rule on the motion to set aside default judgment within forty-five days, and therefore the motion was deemed denied.[69]

Metropolitan appealed the denial of the motion. The Montana Supreme Court reviewed the rules and general policy regarding the setting aside of default judgment, and restated the importance of "two basic tenets: (1) every litigated case should be tried on its merits and default judgments are not favored and (2) trial courts have a certain amount of discretion when considering a mo-

62. *Peak Dev., LLP v. Juntunen*, 110 P.3d 13, 14–15 (Mont. 2005).

63. *Matthews v. Don K Chevrolet*, 115 P.3d 201, 207 (Mont. 2005) (Warner, J., dissenting).

64. *Siewing v. Pearson Co.*, 736 P.2d 120, 122 (Mont. 1987).

65. *Blume v. Metro. Life Ins. Co.*, 791 P.2d 784 (Mont. 1990), *overruled*, *Matthews v. Don K Chevrolet*, 115 P.3d 201 (Mont. 2005).

66. *Keller v. Hanson*, 485 P.2d 705 (Mont. 1971).

67. *Blume*, 791 P.2d at 785.

68. *Id.*

69. *Id.*

tion to set aside a default judgment."[70] The Court then reaffirmed its consistent position on the issue, summoning a statement from its 1905 decision in *Greene v. Montana Brewing Co.*:

> Negligence or inadvertence directly traceable to a party litigant or his attorney . . . has many times been held sufficient to warrant the opening of a default, and trial courts have not infrequently been reversed for their refusal to set aside defaults under such circumstances.[71]

The Court found Metropolitan had produced sufficient evidence to demonstrate it had proceeded with "utmost diligence," and had presented a meritorious defense for which affidavits of merit were not required.[72] The Court pointed out that, while the former employee had threatened to file a lawsuit in the matter of her discharge, Metropolitan had no knowledge or information causing them to believe the lawsuit had actually been filed.[73] Finally, the Court held that the judgment, if allowed to stand, would injuriously affect Metropolitan.[74]

In *Keller v. Hanson*,[75] the Court held that the defense attorney's misfiling of a pleading in another active file of the same client was an adequate reason for setting aside a default judgment against his client.[76] After reviewing the facts presented by a Rule 60(b)(1) motion, the Court vacated the default judgment entered against Hanson for failure to file a timely answer to Keller's complaint. Hanson's attorney had stated generally that there was a meritorious defense and that the plaintiff's complaint had been inadvertently misfiled under one of the defendant's other active files with the firm.[77] The Supreme Court affirmed the trial court's decision, stating that "the trial court should exercise liberality since judgment by default is not favored."[78]

The *Keller* Court affirmed that Montana had long recognized that the reasons enumerated in Rule 60(b)(1) could not be pled in the abstract. "The universal rule is that there must be a statement of facts so that the court can determine whether or not the mistake, inadvertence, surprise or excusable neglect urged in sup-

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70. *Id.* (quoting *Lords v. Newman*, 688 P.2d 290, 293 (Mont. 1984)).

71. *Id.* at 787 (quoting *Greene v. Mont. Brewing Co.*, 79 P. 693, 694 (Mont. 1905)).

72. *Id.* at 786–87.

73. *Blume*, 791 P.2d at 787.

74. *Id.* (stating "a judgment in excess of $185,000 adversely affects even the biggest corporation").

75. *Keller v. Hanson*, 485 P.2d 705 (Mont. 1971).

76. *Id.* at 707.

77. *Id.* at 706.

78. *Id.* at 707.

port of the motion is within the contemplation of the statute."[79] While the Court confirmed that facts must be presented to the trial court, it held there was no requirement that these facts be made known through affidavits of merit.[80] Instead, the Court noted a "departure from the rigid procedural philosophy to one of substance which is modeled after the federal rules in an effort to more equitably reflect the true intent of the law."[81] Once again, the Court emphasized that substance is to be favored over form.

IV. Analysis

During its analysis of *Matthews*, the Montana Supreme Court pointed to the *Blume* standard as the general standard of review when lower courts refuse to set aside defaults and default judgments.[82] However, as noted by Justice Warner in his dissent, the majority erroneously applied a general standard of review to a case where the district court purposefully, and almost apologetically, admitted its failure to exercise *any discretion at all* in ruling on the motion to set aside default judgment.[83] Thus, a "liberal interpretation" of the provisions of Rule 60(b) concerning relief from a default judgment ought to have prevailed where the district court had not even considered the motion.[84] While the courts do not condone negligence in answering pleadings in a timely manner, "default judgments are routinely vacated . . . for the compelling reason that 'substantial justice' between the parties generally requires a hearing on the merits."[85] Where doubt exists, the scales of justice have consistently tipped in favor of setting aside default judgments to ensure trial on the merits.

Aside from the incorrect use of the slight abuse of discretion standard of review, the majority also erroneously faulted defendant Don K Chevrolet for somehow creating such unfortunate circumstances, by exercising its right to oppose consolidation of five separate claims of wrongful discharge.[86] In actuality, what the

79. *Id.* at 706 (quoting *Robinson v. Petersen*, 206 P. 1092, 1094 (Mont. 1922)).
80. *Id.* at 707.
81. *Keller*, 485 P.2d at 707.
82. *See Essex Ins. Co. v. Jaycie, Inc.*, 99 P.3d 651, 653–55 (Mont. 2004) (further clarifying this standard).
83. *Matthews v. Don K Chevrolet*, 115 P.3d 201, 206–07 (Mont. 2005) (Warner, J., dissenting).
84. *Id.* at 206.
85. *Andreasen v. Suburban Bank of Bartlett*, 527 N.E.2d 595, 600–01 (Ill. 1988).
86. *Matthews*, 115 P.3d at 206.

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Court calls Don K Chevrolet's "litigation strategy"[87] was no more than a defendant's justified rationale in choosing to deal with each plaintiff separately. The district court had denied the motion to consolidate the five claims[88] without any indication that the denial prejudiced any party's claims or defenses.

The majority further reasoned that Don K Chevrolet was alerted to Krist Matthews's claim by virtue of Matthews's attempt to join the Fish claim—a claim originally filed in September 2002. However "the mere filing of a complaint does not notify the defendants that they have been sued and that the court intends to render judgment on the dispute which is the subject of the lawsuit. The mechanism which accomplishes these purposes is the summons."[89] Don K Chevrolet was not advised of receipt of the summons by its attorney until after a default judgment had been entered against the company. It would not have been unreasonable for Don K Chevrolet to assume, having not heard otherwise from its attorney, that *one* of the five former employees might have decided not to pursue litigation independently, in light of the denial of the consolidation.

To hold inexcusable Don K Chevrolet's failure to stay abreast of Matthews's filing status is to disregard the entire purpose of the summons.[90] Proper service is a basic and necessary requirement to the commencement of any action in order for a party to formally and legally be on notice that he must defend against a lawsuit.[91] Until a defendant is fully alerted to the existence of a properly filed complaint, he should not be held responsible for following up on each and every threat by potential plaintiffs. Here, although Quatman acknowledged service of the summons by mail, he failed to inform his client that Matthews had properly filed and served a complaint. The Court unfairly imputed to Don K Chevrolet the legal assistant's failure—and consequently Quatman's failure—to bring to its attention the opening of a new case against the company.

By interlocking Matthews's complaint with the complaints of the other discharged employees, the Court disregarded the independence of each claim. These employees were certainly con-

87. *Id.*

88. *Id.* at 203.

89. Cynthia Ford, *Does It Have to Be This Hard? Rule 41(e) in Montana*, 60 Mont. L. Rev. 285, 287 (1999).

90. *Id.*

91. Mont. R. Civ. P. 4.

nected to one another by a common goal—sufficiently connected to explain the assistant's misfiling of the Matthews complaint in the Fish file. However, they had lawfully been disjoined by the lower court, so that Don K Chevrolet would not have to face them as one entity, but independently. As each plaintiff filed and served his own complaint, the defendant would be expected to answer. In short, it is unfair for the majority to point to Don K Chevrolet's awareness of the other four individual actions as sufficient reason to hold that "Don K had notice of [Matthews's] claim,"[92] when the lower court had specifically separated the claims.[93]

Finally, the Court faulted Don K Chevrolet for offering "no evidence in the District Court to dispute the presumption that the letter and notice mailed to its counsel were received."[94] The Court supported this remark by referencing Montana Code Annotated § 26-1-602(24), regarding disputable presumptions.[95] In accordance with Rule 11,[96] the truthfulness of briefs submitted to a court must to be assumed. It is unclear how the Montana Supreme Court expected Don K Chevrolet to provide adequate support for its attorney's sworn statement of never having received a letter which the plaintiff claimed was mailed to him. It was, after all, entirely possible that the letter was not mailed or properly delivered.

It is ironic that the same Court that was unwilling to forgive the mistake of defense counsel's assistant, was quick to assume that the plaintiff's assistant, who presumably mailed the missing letter to Quatman, could not have committed a similar clerical mistake. The Court flatly rejected defense counsel's assertion that he acted in good faith and proceeded with diligence once his legal

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92. *Matthews v. Don K Chevrolet*, 115 P.3d 201, 206 (Mont. 2005).

93. *Id.* at 203.

94. *Id.* at 204 n. 1.

95. Mont. Code Ann. § 26-1-602 (2005). The relevant part of the statute reads:

> Disputable presumptions. All other presumptions are "disputable presumptions" and may be controverted by other evidence. The following are of that kind . . . . (24) A letter duly directed and mailed was received in the regular course of the mail.

Id.

96. Mont. R. Civ. P. 11. The relevant part of the statute reads:

> The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law . . . and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Id.

assistant's mistake was discovered. But it embraced the assumption that plaintiff's counsel, and the U.S. Postal Service, could not have possibly made any mistake in the course of their daily business activities.

In the end, the Court upheld the default judgment of $185,000 against the defendant, including $88,608 in punitive damages. In so doing, the Court completely ignored a significant provision of the Montana Code which states that punitive damages require proof by "clear and convincing evidence."[97]

V. Conclusion

The defendant in *Matthews v. Don K Chevrolet* was injured by two clerical mistakes that were entirely out of its control—mistakes that were small, but very costly. First, Quatman failed to notify Don K Chevrolet that Matthews filed a formal complaint against the company. Second, Don K Chevrolet's counsel had no opportunity to argue before the District Court that Rule 60(b) applied to this unfortunate turn of events, since the Clerk of Court never calendared a hearing. Don K Chevrolet had neither control over nor access to either office where the mistakes occurred: the first error occurred in the office of Don K's counsel, and the second error occurred in the office of the Clerk of District Court.

Adding insult to injury, the Montana Supreme Court placed the fault for failing to answer the complaint not on the attorney or his beleaguered assistant, who alone saw the complaint, but on the client who was never made aware of its existence. In this short opinion, the Court injured more than Don K Chevrolet by referring to the breakdown in communication with the client as a "serious disregard of the judicial process"[98]—the whole purpose of the Rules of Civil Procedure appears forgotten. One questions the sensibleness of expecting clients who *might* be sued to regularly perform inventories of their attorney's active files in search of summonses and complaints that might have been misfiled. Nor should a client be expected to be responsible for a district court's proper calendaring and review of its motions.

Finally, it was strikingly unfair for the Court to impute clerical blunders to Don K Chevrolet under the pretense that the former employer had received adequate notice of the suit by Matthews's prior attempt to join another employee's wrongful termi-

97. Mont. Code Ann. § 27-1-221(5); *Matthews*, 115 P.3d at 208 (Warner, J., dissenting).
98. *Matthews*, 115 P.3d at 205 (majority).

nation suit. The Court not only disregarded the all-important role of the summons, but ignored the possibility that Matthews might have opted not to sue his former employer after being prohibited from joining the Fish suit. Based on Don K Chevrolet's knowledge of the strengths and weaknesses of the Matthews case, it would not have been inconceivable for the company to believe Krist Matthews had abandoned his imminent, but incomplete, course of action. However, the merits of Matthews's action will forever remain unknown. The majority, without admitting as much, exercised its own discretion as to the legitimacy of Don K's reasons for the lack of a timely answer.

The Court based its analysis largely upon the disputable presumption that the defendant received notice of the complaint. Instead of remanding the case to the district court for trial on the merits—in light of the failure of the lower court to exercise its rightful discretion in ruling on the motion to set aside default judgment—the Court ruled harshly against the defendant. In an unprecedented move, the Court overlooked unsettled questions of fact, specifically those concerning whether the defendant received proper notice of the hearing on the entry of default. It reviewed the case in the light most favorable to the plaintiff, contrary to the universal spirit of the Rules of Procedure and general legal precedent. Bypassing its prior decision in *Keller*, where a counsel's misfiling of a pleading into another active file of the same client established an adequate reason for setting aside a default judgment, the Court set new precedent in Montana. In so doing, the Court left potential defendants wondering if similar clerical mistakes will result in their own loss of opportunity to defend themselves for lack of notification of a pending lawsuit. The Rules' framers never intended that a simple clerical mistake would deny a defendant's right to access the courts of Montana.