

No. DA 21-0111

2021 MT 273N

Jada Ku v. Great Falls Public Library

In the Supreme Court of the State of Montana, Honorable Judges, James Jeremiah Shea, Ingrid Gustafson, Beth Baker, Mike McGrath, Laurie Mckinnon, Jim Rice, and Dirk M. Sandefur.

APPENDIX

Jada Ku

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Jada Ku - Petitioner

v.

Great Falls Public Library - Respondent

Appendix Sequence	Filed	Text	Judge
A	02/14/2021	Dismissal Order the Montana Eighth Judicial District Court, Cascade County.	John A. Kutzman
B	10/19/2021	Final Judgment of the Supreme Court of the State of Montana.	Ingrid Gustafson, Beth Baker, Laurie Mckinnon, Dirk M. Sandefur, Jim Rice
C	11/12/2021	Notice of Filing Remittitur	The Supreme Court of the State of Montana

*Jada Ku - Plaintiff/Appellant, Great Falls Public Library - Defendant/Appellee

**MONTANA EIGHTH JUDICIAL DISTRICT COURT
CASCADE COUNTY**

JADA KU, Plaintiff, vs GREAT FALLS PUBLIC LIBRARY, Defendant.	Cause No. CDV-20-379 DISMISSAL ORDER
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Plaintiff Jada Ku's 114-page *Complaint* alleges the Great Falls Public Library illegally discriminated against her on the basis of actual or perceived disability. CR1.¹ The Library responds that the Court lacks subject matter jurisdiction to consider these claims because Ms. Ku did not exhaust her administrative remedies by filing a timely administrative charge with the Human Rights Bureau, and further observes that the deadline for filing such a charge has now passed. The Library seeks dismissal pursuant to Rule 12(b)(1) (lack of subject matter jurisdiction) and Rule 12(b)(6)(failure to state a claim). CR6. For the reasons that follow, the Library is correct and the Court accordingly **GRANTS** the Library's *Motion to Dismiss*.

¹"CR" refers to the Clerk's Case Register. The ensuing number refers to the Clerk's handwritten docket number on the lower right corner of the first page of each filing.

I. The Rule 12(b)(1) Standard

Rule 12(b)(1) dismissal is appropriate if the Complaint does not “state[] facts that, if true, would vest the court with subject matter jurisdiction.” *Gen. Constructors, Inc. v. Chewculator, Inc.*, 2001 MT 54, ¶ 9, 304 Mont. 319, 21 P.3d 604, *overruled on other grounds by Big Spring v. Conway*, 2011 MT 109, ¶ 45, 360 Mont. 370, 255 P.3d 121.

Rule 12(b)(1) motions, like Rule 12(b)(6) motions, require the courts to consider the *Complaint* in the light most favorable to the non-moving party and to deny dismissal “unless it appears beyond a doubt that the non-moving party can prove no set of facts in support of its claim which would entitle it to relief.” *Chewculator*, ¶ 17. However, Rule 12(b)(1), unlike Rule 12(b)(6), cloaks courts with considerable discretion to consider jurisdictional information that is extrinsic to the four corners of the complaint. *Harrington v. Energy West Inc.*, 2015 MT 233, ¶ 9, 380 Mont. 298, 356 P.3d 441.

II. Factual Allegations

Ms. Ku pleads no specific facts about the general nature or purpose of the Library. Pursuant to *Harrington, supra*, the Court judicially notices that the Great Falls *Public Library* “offers . . . services, goods, or facilities to the general public . . .” within the meaning of Mont. Code Ann. § 49-2-101(20)(a). It operates under the direction of a board of trustees appointed by the City Commission.²

²<https://www.greatfallslibrary.org/about-us/library-board> (last accessed 2/14/2021).

Ms. Ku's *Complaint* and *Amended Complaint* allege four causes of action: "Breach of Confidence," "Discrimination of My Mental Disability," "Intimidation," and "Harassment." CR1 & 14. She contends that on multiple occasions in 2019, Library staff discriminated against her based on her asserted mental disability by obstructing her diary writing, using Library computers to spy on her family, and having her removed and banned from the Library for two weeks. See CR1, Diary at pp. 27-41 and 83-114; See also CR14 & 15. The most recent alleged incident occurred on October 29, 2019. CR1, pp. 112-114.

Documents attached to her *Complaint* suggest she was in contact with the Human Rights Bureau by June of 2019. The attachments include a July 10, 2019 letter on Department of Labor & Industry letterhead notifying her that a Human Rights Bureau investigator would phone her on August 13 to do an intake interview. 7/10/19 HRB ltr attached to CR1. She does not allege she ever completed this process. CR1. She does not allege she received a right to sue letter from the Human Rights Bureau or the Equal Employment Opportunity Commission. *Id.* She does not attach any such document from either agency.

Ms. Ku filed this case on July 20, 2020. *Id.*

The Library moved to dismiss on August 11. CR5. Ms. Ku did not respond within the time permitted by Uniform District Court Rule 2. On December 7, without leave of Court, she filed an *Amended Complaint* and attached a list of Library employees she wants fired. CR14. The file is devoid of any HRB or EEOC dismissal or right to sue letter.

III. Applicable Law

The Montana Human Rights Act prohibits a “public accommodation” from “refusing, withholding from, or denying to a person any of its services, goods, facilitates, advantages, or privileges because of sex, marital status, race, age, *physical or mental disability*, creed, religion, color, or national origin . . .” Mont. Code Ann. § 49-2-304(1)(a) (emphasis added). A “public accommodation” is “a place that caters or offers its services, goods, or facilities to the general public . . .” Mont. Code Ann. § 49-2-101(20)(a).

It includes *without limitation* a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring salon or shop, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital *and all other public amusement and business establishments*.

Id. (emphasis added).

The Act’s procedures are exclusive:

The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of chapter 3 or this chapter . . . *A claim or request for relief based upon the acts may not be entertained by a district court other than by the procedures specified in this chapter.*

Mont. Code Ann. § 49-2-512(1) (emphasis added). *See also Saucier v. McDonald’s Rests. of Mont., Inc.*, 2008 MT 63, ¶¶ 39-40, 342 Mont. 29, 179 P.3d 481.

These procedures require the aggrieved party to file an administrative charge with the Human Rights Bureau within 180 days of the alleged unlawful conduct. Mont. Code Ann. § 49-2-501. The charging party must then participate in an informal administrative investigation conducted by the Human Rights Bureau and receive a dismissal/right to sue letter before proceeding to litigate the claim in district court. Mont. Code Ann. § 49-2-511(3) and 49-2-512(3).

[T]he MHRA establishes procedures and remedies, separate from tort law, for legal redress of conduct which falls within the definition of unlawful discrimination. *The Legislature has mandated that this remedial scheme is the exclusive means of legal redress for unlawful discrimination . . .*

Among other things, this exclusive remedial scheme requires that allegations of unlawful discrimination in employment must be brought in a complaint filed with the Human Rights Bureau . . . within 180 days after the alleged unlawful discriminatory practice occurred or was discovered . . .

A timely filed complaint triggers an investigation by the Department . . . If the Department determines that the allegations are supported by a preponderance of the evidence, it must “attempt to achieve a resolution of the complaint by conference, conciliation, and persuasion.” . . . If those efforts are unsuccessful, the Department must then hold an administrative hearing on the complaint . . . After the hearing, if the Department finds that unlawful discrimination has in fact occurred, it must issue an order directing the accused party to refrain from such discriminatory conduct . . .

Thereafter, a party may appeal to the Human Rights Commission which, after an administrative hearing, may dismiss the complaint or grant any of the same components of relief which the Department is authorized to grant . . . Then a party may commence a civil action in district court. However, this type of civil action “may not be entertained by a district court other than by the procedures specified” in the MHRA.

Saucier, ¶¶ 39-42 (internal citations omitted).

IV. Analysis

Throughout her *Complaint* and *Amended Complaint* Ms. Ku alleges “discrimination” by the Library. The Library is a “public accommodation” within the meaning of Mont. Code Ann. § 49-2-101(20)(a). Ms. Ku’s claims accordingly fall squarely within the Human Rights Act. This Court lacks jurisdiction to consider them “other than by the procedures specified” in the Act. *Saucier, supra*; § § 49-2-512(1), *supra*.

Those procedures included timely filing an administrative charge, *Saucier, supra*, and obtaining a right to sue letter, Mont. Code Ann. §§ 49-2-511(3) and 49-2-512(3). Even if the Court were to generously construe Ms. Ku’s July 2019 communications with the Human Rights Bureau as the required formal written administrative charge, the file is devoid of evidence of any subsequent cause finding by the Bureau or a dismissal letter or a right to sue letter. One of these would necessarily exist if she had timely filed an administrative charge as the law requires. Further, her 180-day deadline to file such a charge has long since run; it is too late to file one now.

Consequently, the Court lacks subject-matter jurisdiction over her public accommodation discrimination claims and thus cannot proceed to the merits of whether the facts as alleged constitute viable claims under the MHRA. Allowing her to amend would be futile because no amendment would overcome the time bar. Her *Complaint* and *Amended Complaint* are accordingly **DISMISSED** with prejudice.



Digitally signed by Judge John Kutzman
DN: cn=Judge John Kutzman, o=Montana Judicial
Branch, ou=Eighth Judicial District,
email=jkutzman@mt.gov, c=US
Date: 2021.02.14 17:05:48 -07'00'

John A. Kutzman
District Court Judge

cc: Plaintiff pro se
300 56th St. S.
Great Falls, MT 59405
Defendant c/o counsel Jordan Crosby
UGRIN ALEXANDER ZADICK P.C.
PO Box 1746
Great Falls, MT 59403

FILED

App. B

OCT 19 2021

DA 21-0111

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 273N

JADA KU,

Plaintiff and Appellant,

v.

GREAT FALLS PUBLIC LIBRARY,

Defendant and Appellee.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. CDV-20-379
Honorable John A. Kutzman, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jada Ku, Self-Represented, Great Falls, Montana

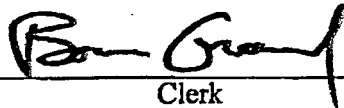
For Appellee:

Jordan Y. Crosby, James R. Zadick, Ugrin Alexander Zadick, P.C.,
Great Falls, Montana

Submitted on Briefs: September 29, 2021

Decided: October 19, 2021

Filed:


Clerk

Justice Ingrid Gustafson 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 Jada Ku appeals from the February 16, 2021 Dismissal Order from the Eighth Judicial District Court, Cascade County. Ku filed a complaint against the Great Falls Public Library (GFPL) on July 17, 2020. She alleged "Breach of Confidence," "Discrimination of my mental Disability," "Intimidation," and "Harassment" and sought financial compensation and a public apology. Ku attached 114 pages of her handwritten diary, as well as letters she wrote to various government agencies about her complaints against GFPL. Ku did not include a right to sue letter or dismissal from the Human Rights Bureau (HRB) or the Equal Employment Opportunity Commission (EEOC). On August 11, 2020, GFPL filed a motion to dismiss for failure to state a claim under M. R. Civ. P. 12(b)(6) and for lack of jurisdiction under M. R. Civ. P. 12(b)(1) for failure to exhaust administrative remedies. Ku filed an untimely response on October 29, 2020. Ku then filed an amended complaint on December 7, 2020, without leave of the District Court. She did not include a dismissal or right to sue letter from the HRB or EEOC or allege such a letter had been issued. The GFPL renewed its motion to dismiss the case on December 17, 2020. On February 16, 2021, the District Court dismissed the case under

M. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction, as Ku did not allege or provide evidence that she had completed the mandatory administrative process through the HRB for an unlawful discrimination claim. Ku appeals.

¶3 In her briefing on appeal, Ku maintains she has a discrimination claim against GFPL. She recounts her interactions with the HRB and states the HRB investigator did not provide her with a right to sue letter after she asked him to do so in summer 2020. She argues the District Court erred in dismissing her case as the court should have appointed her counsel because she has a mental disability and an interpreter due to a language barrier.

¶4 “[A] district court’s decision is presumed correct and it is the appellant who bears the burden of establishing error by that court.” *In re Marriage of McMahon*, 2002 MT 198, ¶ 7, 311 Mont. 175, 53 P.3d 1266. An appellant’s brief on appeal must raise legal errors with the district court’s order and contain citations to legal authorities in support of the appellant’s contentions. *See* M. R. App. P. 12(1)(g). Ku has failed to articulate a legal error with the District Court’s orders or cite to any legal authority in support of her contentions. She has failed to meet her burden of establishing error by the District Court.

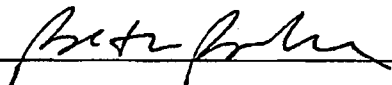
¶5 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶6 Affirmed.



Justice

We concur:









Justices

App. C

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

2021 NOV 12 AM 10:52

Jada Ku,
Plaintiff/ Petitioner,

Vs.

Great Falls Public Library,
Defendant/ Respondent

FILED
Case Number: DV-7-2020-0000379-OC
12/12/21

NOTICE OF FILING
REMITTITUR

To: Plaintiff's Attorney: Pro Se

Defendant's Attorney: Jordan York Crosby

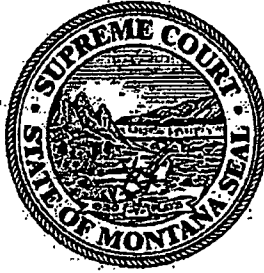
NOTICE IS HEREBY GIVEN OF THE RECEIPT OF Remittitur from the Supreme Court of the State of Montana of the above-entitled case.

DATED this 12th day of November 2021.



TINA HENRY, CLERK OF COURT

BY *Emilett J. Jurey*
Deputy



CLERK OF DISTRICT COURT

2021 NOV 10 AM 11:47

FILED

BY *Erin M. Miller*

**IN THE SUPREME COURT OF THE STATE OF MONTANA
THE OFFICE OF THE CLERK OF SUPREME COURT
HELENA, MONTANA 59620-3003**

November 8, 2021

REMITTITUR

Supreme Court Case No. DA 21-0111
District Court Case No. CDV-20-379

JADA KU,

Plaintiff and Appellant,

v.

GREAT FALLS PUBLIC LIBRARY,

Defendant and Appellee.

This case was a review of the order/judgment of the District Court.

IT IS ORDERED by the Supreme Court in an opinion, that the decision of the District Court is Affirmed.

The appeal record is hereby returned to the Clerk of District Court of Cascade County District Court.

I certify that the attached is a true and correct copy of the opinion filed by the Supreme Court on October 19, 2021.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Bowen Greenwood".

Bowen Greenwood
Clerk of the Supreme Court