

18-8480

Supreme Court, U.S.
FILED

MAR 13 2019

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FEDERAL LAND PATENT HOLDER
CHARLES FUNK IRREVOCABLE TRUST
SUCCESSOR TRUSTEE,
KEVIN FUNK — PETITIONER

(Your Name)

vs.

STATE OF MONTANA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE STATE OF MONTANA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FEDERAL LAND PATENT HOLDER
CHARLES FUNK IRREVOCABLE TRUST
SUCCESSOR TRUSTEE,
KEVIN FUNK

(Your Name)

CORECIVIC
50 CROSSROADS DR.

(Address)

SHELBY, MONTANA 59474

(City, State, Zip Code)

406 434-7055

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

In an action in which the claim to be tried is a claim of 100% land ownership-title HELD in a irrevocable trust-deed update of a Federal Land Patent, such land HELD by ALLODIAL TENURE.

Allodial land is owned absolutely WITHOUT recognizing any dominant lord or Government to whom any duty is due on account of the LAND.

Land in the United States are universally ALLODIAL. NOW WHEN a individual PAYS money for services to be rendered from a TRUST that becomes IRREVOCABLE TRUST for: purpose of protecting a departed settlors assets from a divorcing spouse and creditors of a BENEFICIARY, with the deed and patent recitals conclusive, as the LAND is for the sole use and benefit of the HOLDER and designated heirs of the claimant, FOREVER. Includes protections also afforded by: U. S. Constitution ARTICLE ONE, Section Ten.

Is there a RIGHT for the IRREVOCABLE TRUSTEE and PATENT HOLDER to redress any breach of the trust and HOLD and RETAIN the LAND UNTIL IN THE JUDGEMENT of the TRUSTEE and AUTHORIZATION from the BENEFICIARY when distribution is to be made, FREE FROM THE States INFRINGEMENT or INTENTIONAL INTERFERENCE OF CONTRACT by turning the EXCERCISE of such RIGHTS INTO A CRIME?

[1] JURISDICTIONAL CLAIM

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TIM FOX
Montana Attorney General
P.O. Box 201401 / 215 North Sanders
Helena, Montana 59620-1401

TABLE OF CONTENTS

OPINIONS BELOW..... 1
JURISDICTION.....2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3
STATEMENT OF THE CASE 4
REASONS FOR GRANTING THE WRIT 21
CONCLUSION..... 20

INDEX TO APPENDICES

APPENDIX A Decision of State Court of Appeals 29

APPENDIX B Decision of the State Trial Court

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F MOTION: Stipulation to resolve outstanding issues ITEM 7, P.3

APPENDIX G Order: Attaching and sequestering assets, appointing receiver
First time the NAME: CHARLES FUNK IRREVOCABLE TRUST in any
official court action.

APPENDIX H State's response to defendant's objection to witness and motion
for exclusion. States admission: "to sever a part of the trust
and place it for sale". Page 2, Line one.

INDEX TO APPENDICES
continued

1

APPENDIX I Motion: State's response to defendant's motion in limine to suppress evidence of alleged prior bad acts pursuant to 404 B. States admission: To force the Federal Land Patent holder and Charles Funk Irrevocable Trust - Trustee to concede such Land, and the State illegally extinguished the PERMANENT EASEMENT.

APPENDIX J Appellee's brief cause DA 13-0023 page 5 ADMISSION THE CHARLES FUNK IRREVOCABLE TRUST IS IN EFFECT.

EXHIBITS FOLLOW

EXHIBIT I Certified Quitclaim deed 546520 Pages: 4, update Federal Land Patents 20762 and 935508, for page one filed.

EXHIBIT II Certified Federal Land Patent 20762, for page two filed.

EXHIBIT III Certified Federal Land Patent 935508, for page three filed.

EXHIBIT IV Exhibit "A" Land description, for page four filed.

EXHIBIT V Certified Quitclaim deed 544793 Pages: 5 update Federal Land Patents 20762 and 935508, combination deed 526604, for page one filed, with two Certified seals.

EXHIBIT VI Certified Federal Land Patent 20762, for page two filed.

EXHIBIT VII Certified Federal Land Patent 935508, for page three filed.

EXHIBIT VIII Certified Exhibit "A" LAND description, for page four filed.

EXHIBIT IX CERTIFIED Montana certificate of death 011673, page five filed.

EXHIBIT TAMPERED I MISSING: 1. Deed number 546520

2. Pages: 4

3. The remainder of pages 2,3, and 4.

EXHIBIT TAMPERED V MISSING: 1. Deed number 544793 entire recording stamp to the left of combination deed 526604.

2. Certified Bureau of Land Management seal.

3. Certified State of Montana, Lake County seal.

4. KEVIN FUNK DID NOT FILE DEED 526604 or DEED 544793 combo using a General delivery address. That's why the deed states:

"TO: ORIGINAL HANDED BACK TO KEVIN FUNK
AT THE COUNTER."

5. The remainder of pages 2,3,4 and 5.

INDEX TO APPENDICES
CONTINUED

- EXHIBIT BB 1 Reasons to purchase a TRUST.
- EXHIBIT E 1 Charles Funk trust agreement that becomes, and is NOW THE CHARLES FUNK IRREVOCABLE TRUST.
- EXHIBIT E 2 TRUST SECOND ADDENDUM CONTRACT.
-
- EXHIBIT ONE Lease and right of first refusal contract.
- EXHIBIT TWO Memorandum of lease and right of first refusal contract
- EXHIBIT THREE Buy - sell agreement
- EXHIBIT FOUR Property tax receipt 1-7-2015
- EXHIBIT FIVE Order.....sale of real property 2-25-2015
- EXHIBIT SIX REALTY TRANSFER CERTIFICATE
- EXHIBIT SEVEN Warranty deed 541106, NOT signed by KEVIN FUNK
- EXHIBIT EIGHT Property record card 7-29-2015 C.F.I.T OWNER 100¹/₁₀₀
Last modified: 7-1-2015
- EXHIBIT NINE 2015 real property tax statement 10-16-2015

-
- | | | | |
|--------------|--------------------|---------------|------------------|
| EXHIBIT AA1 | a 72-34-304 M.C.A. | EXHIBIT AA 10 | 72-38-209 m.c.a. |
| M.C.A. 2011 | b 72-34-306 M.C.A. | EXHIBIT AA 11 | 72-38-207 m.c.a. |
| | c 72-34-317 M.C.A. | EXHIBIT AA 12 | 45-7-208 m.c.a. |
| EXHIBIT AA3 | 72-38-504 M.C.A. | | |
| EXHIBIT AA4 | 72-38-903 M.C.A. | | |
| EXHIBIT AA5 | Section 31. | | |
| EXHIBIT AA6 | 72-38-220 M.C.A. | | |
| EXHIBIT AA7 | 40 4-202 M.C.A. | | |
| EXHIBIT AA8 | 1-2-101 M.C.A. | | |
| EXHIBIT AA9 | 72-38-812 M.C.A. | | |
| EXHIBIT AA9A | 70-20-308 M.C.A. | | |

TABLE OF AUTHORITIES CITED

CASES

(ALL ATTACHED)

PAGE NUMBER

STATUTES AND RULES

OTHER

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Bagnell v. Broderick, MO. 1839 38 U.S. 436, 13 Pet. 436, 10 L.ED. 235.....	18
Dept. of Env'tl. Quality v. BNSF Ry. Co., ¶152: See 1-2-101... 2010 MT 267, St. ex rel.,	22
Erickson v. Pardus, 551 U.S. 89, 94(2007).....	4
Estelle v. Gamble 429 U.S. 97, 106 (1976).....	4
Gibson v. Chouteau, Mo. 1872, 80 U.S. 92, 13 WALL, 92, 20 L.Ed. 534	20
Griffin 275 M 37, 909 P2d 707, 53 St. Rep. 28 (1996).....	26
Harris 2006 MT. 63, 331 M 368, 132 P3d 502 (2006)	26
Helmsley-Spear, Inc. v. Winter, 74A.D. 2d 195, 426 N.Y.S. 2d 778 (1980) Aff'd 52N.Y. 2d 984, 438 N.Y.S. 2d 79, 419 N.E. 2d 1078 (1981)..5	5
Howard v. Dalio, 249 M 316, 815 P2d 1150 (1991)	26
Malquist, 227 M 413, 739 P2d 482, 44 St. Rep. 1193	26
Miller v. United States, 230 F. 2d 486, 489 5th Cir. (1956)	25
Porter v. Ollivle, 620 F. 3d 952, 1038 9th Cir. (2017)	4
Rose v. Buckland, 1856, 17 Ill. 311.	21
Smith, 270 M 263, 891 P2d 522, 52 St. Rep. 174, (1995)	26
Stanton v. Sullivan, 7a 696	22

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
U.S. v. Board of Com'rs of Fremont County, Wyo. C.C.A. Wyo., 1944, 145 F.2d 329, certiorari denied 65 S.Ct. 563, 323 U.S. 804, 89 L.Ed. 641.....	20
United States v. Stone, 69 U.S. 525, 17 L.Ed.765, 1864 U.S.	23
Warnack v. Coneen Family Trust, 266 M 203, 879 P2d 715 (1994)	26
Wilcox v. Jackson, 38 U.S. 498, 510, 10 L.Ed. 264, 270, 1839 U.S.	24, 25
Wineman v. Gartrell, 53 FED 697, 2 U.S. App. 581. 1892.	21
 STATUTES	
28 U.S.C. section 1257 a	2,26
 MONTANA CODE ANNOTATED	
15-7-305 and 310.....	11
1-2-101	8,22
40-4-202	8,22,26
45-6-101	19
45-7-208	16
70-20-101	14
70-20-308	12
72-33-411	19
72-34-304	6,19,20
72-34-306	5,6,19
72-34-317	6,20
72-38-207	14
72-38-209	14
72-38-220	7
72-38-504	6
72-38-812	9,10
72-38-903	6

OTHER AUTHORITIES

PAGE NUMBER

UNITED STATES CONSTITUTION ARTICLE I Section 10,	3,7,21,24,27
UNITED STATES CONSTITUTION AMENDMENT IV,	3A,24,27
UNITED STATES CONSTITUTION AMENDMENT V,	3A,24,27
UNITED STATES CONSTITUTION AMENDMENT VI,	3A,13,24,27
UNITED STATES CONSTITUTION AMENDMENT XIV,	3,24,27
MONTANA CONSTITUTION ARTICLE II Section 3.	5,24
MONTANA CONSTITUTION ARTICLE II Section 31,.....	3,6,7,24,27
FEDERAL LAND PATENT	23

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 12-18-2018.
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE I SECTION 10.

[1] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts: pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

MONTANA CONSTITUTION

ARTICLE II, SECTION 31.

No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENT IV [1791]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI [1791]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

In Erickson, the Supreme Court held:

A Pro-Se complaint must be "liberally construed" since "a Pro-Se complaint, however, inartful pleaded, must be held to less stringent standard than formal pleadings drafted by Lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)). See i,e., Porter v. Ollivle, 620 F.3d 952, 1038 (9th Cir. 2017) (VACATED and REMANDED).

1. In June 20, 1908, the FEDERAL LAND PATENT CLAIMANT HAS BEEN ALLOTTED THE DESCRIBED LAND. Please see (EXHIBIT-I).
2. On October 8, 1908, the PRESIDENT OF THE UNITED STATES, THEODORE ROOSEVELT, SIGNED FEDERAL LAND PATENT # 20762. Please see (EXHIBIT-II).
3. And that, in April 2, 1924, the PRESIDENT OF THE UNITED STATES, CALVIN COOLIDGE, SIGNED FEDERAL LAND PATENT # 935508, AS THE ACTS OF THE EXECUTIVE WITHIN THE SCOPE OF SUCH POWERS AND BY VIRTUE OF LAW, CANNOT BE REMOVED, CANNOT BE REVERSED BY ANY COURT. THE RECITAL OF THE FEDERAL LAND PATENT IS CONCLUSIVE. THE LAND IS FOR SOLE USE OF THE CLAIMANT. Please see (EXHIBIT-III).
4. That, December 4, 1991, made and entered the CONTRACT of the CHARLES FUNK REVOCABLE LIVING TRUST. THE LAND IS INALIENABLE PROPERTY EXEMPT IN FACT. Please see (EXHIBIT-E(1)).
5. In march 2, 1992, made and entered the CONTRACT OF a SECOND ADDENDUM to the CHARLES FUNK REVOCABLE LIVING TRUST. This REMOVED the listed BENEFICIARY ~~Daughter-In-Law~~ (June Funk), as described in the December 4, 1991, Trust. Please see (EXHIBIT-E(2)).

6. On July 15, 1993, TITLE was filed for the LAND to be held in the TRUST.

7. That, on October 13, 1996, - Mr. Charles Funk passed away. THE CHARLES FUNK REVOCABLE LIVING TRUST terms are:

(a) ... "Upon the death of trustor, this Trust SHALL become IRREVOCABLE and UNAMENDABLE, until it terminates as provided for in Paragraph SIXTH below." Please see CHARLES FUNK REVOCABLE LIVING TRUST AGREEMENT (EXHIBIT-E(1)) at 1, Paragraph THIRD.

(b) "Upon the date of the Trustor's death, KEVIN BRENT FUNK shall become SUCCESSOR TRUSTEE to terminate Trust under the following terms and conditions. ..." Please see IBID, at 2, Paragraph SIXTH.

(c) The Trustee shall have [all] the POWERS, DUTIES, and OBLIGATIONS as set forth and described in the Laws of the State of Montana including but not limited to Sections 72-21-101 through 71-21-206, Mont. Code Ann., as amended or as may hereafter be amended, and no bond shall be required of the Trustee. Please see IBID, at 2, Paragraph SEVENTH.

THE TRUST IS [NOW] THE CHARLES FUNK IRREVOCABLE TRUST.

8. And that, as of March 8, 1997, Trustee has the Power to COLLECT, HOLD, and RETAIN [INALIENABLE] Property exempt in Fact. ... [a] beneficiary's rights in a spendthrift trust, Helmsley-Spear, Inc. v. Winter, 74 A.D.2d 195, 426 N.Y.S.2d 778 (1980), aff'd, 52 N.Y.2d 984, 438 N.Y.S.2d 79, 419 N.E.2d 1078 (1981).

According to the Montana Constitution, INALIENABLE RIGHTS: ARTICLE II, Section 3: All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Trustee Exercised POWERS afforded in the TERMS of the Trust "Not limited To":

(b) § 72-34-306, Mont. Code Ann.: Collecting and holding

property. The Trustee has the power to collect, hold, and retain Trust property received from a Trustor or any other person until, in the judgment of the Trustee, disposition of the property should be made. The property may be retained even though it includes property in which the Trustee is personally interested. Please see (EXHIBIT-AA1(b)).

(a) § 72-34-304, Mont. Code Ann.: **Application of rules governing trustees' powers.** An instrument that incorporates the powers provided in former Title 72, chapter 21, ("Montana Trustees' Powers Act") shall be considered to refer to the powers provided in 72-34-306 through 72-34-311, 72-34-316 through 72-34-323, 72-34-326 through 72-34-332, and 72-34-336 through 72-34-342. For this purpose, the trustees' powers under former Title 72, chapter 21, ("Montana Trustees' Power Act") are not diminished and the trustee is not required to obtain Court approval for exercise of a power for which Court approval was not required by former Law (a) (same).

(c) § 72-34-317, Mont. Code Ann.: **Management of Property.** The trustee has the power to manage, control, divide, develop, partition, change the character of, or abandon trust property or any interest therein (same).

9. That, January 31, 2009, DEEDS EXECUTION Date for TITLE Held in the CHARLES FUNK IRREVOCABLE TRUST and CERTIFIED BUREAU OF LAND MANAGEMENT FEDERAL LAND PATENTS # 20762 and # 935508. Such land is INALIENABLE PROPERTY EXEMPT IN FACT. Additionally covered by an exemption Statute:

§ 72-38-504, Mont. Code Ann.: Whether or not a Trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion ... Please see (EXHIBIT-AA3(1)).

§ 72-38-903, Mont. Code Ann.: **Diversification--duty of trustee--exception (2)** If trust assets include farm or ranch property, a closely held family business, timber interests, or interest in oil, gas, or minerals, the trustee may elect to retain those assets... A Trustee's exercise of discretion to retain assets of the character described in this subsection is not a breach of the trustee's duty to diversify investments. Please see (EXHIBIT-AA4(2)).

According to the Montana Constitution, Ex post facto, obligation of contracts, and Irrevocable privileges: ARTICLE II, Section 31: No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of

special privileges, franchises, or immunities, shall be passed by the legislature. Please see (EXHIBIT-AA5).

According to the United States Constitution, ARTICLE I Section 10: No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal, coin money, emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

§ 72-38-220, Mont. Code Ann.: Intermittent judicial intervention in trust administration: The Administration of trusts is intended to proceed expeditiously and free of judicial intervention, subject to the jurisdiction of the court. See (EX-AA6).

10. In February 12, 2009, June Funk filed for divorce. The CHARLES FUNK IRREVOCABLE TRUST was not named, was not served and not a party to the divorce action.

11. Now in June of 2010, for the divorce trial, DR-9-45, [the contract of -"the-TRUST"-was-"ENTERED"-as-"EXHIBIT-E"], for evidence to notify all Courts and its Officers of [no "DISTRIBUTION"], thus, the Trust, [not "TERMINATED"]. With no trustee or Federal Land Patent claimant authority or signature for termination, the Court, at the end of the trial, with no [VALID] concern, STRIPPED the [50/50-arrangement] with Kevin Funk's daughter and without [OUR DAUGHTER, 'TAMARAS' knowledge], to supervised visits only.

12. Now, in October of 2010, the Court issued the divorce decree. June Funk and Kevin Funk did not [craft] such decree or sign any DEEDS of TITLE held in the CHARLES FUNK IRREVOCABLE TRUST, as there is no AUTHORIZATION from the Trustee and Beneficiary. The Court did not cite any Constitutional or Statutory conferred power or authority to ['sever'] and sell ['IRREVOCABLE'] Trust, INALIENABLE PROPERTY AND PATENT LAND, thus, such decree [is-in-want-of-authority], thus, VOID. The Funk's didn't sign the decree.

13. So, in January of 2012, the Montana Supreme Court issued the

opinion per the Appeal, DA 11-0209. The Court opinion added and subtracted the language of § 40-4-202, Mont. Code Ann. with "without regard to title.":

§ 40-4-202, Mont. Code Ann.: ... 'whenever acquired and whether the title thereto is in the name of the husband or wife or both ...' Please see (EXHIBIT-AA7).

Such Court action is contrary to § 1-2-101, Mont. Code Ann.: Role of the Judge:

§ 1-2-101, Mont. Code Ann.: In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all. Please see (EXHIBIT-AA8).

14. On July 19, 2012, DR-9-45, Post-Remand State District Court Transcripts:

KEVIN FUNK'S ATTORNEY (Mr. SCOTT: "It just can't be done if we're going to follow the legal principles in this case." Please see (Post-Remand Transcript) at 17, line 4-23.

So, what "can't be done" means: the land cannot be transferred to anyone not a party to the CHARLES FUNK IRREVOCABLE TRUST. No distribution, not terminated, thus, no legal and lawful avenue to exit.

15. And that, on December 12, 2012, the Motion to RESOLVE OUTSTANDING issues is Cause DR-9-45 shows that the parties, all are aware, the CHARLES FUNK, Trustee to the IRREVOCABLE TRUST, signature is needed [~~to-distribute-and-sell-IRREVOCABLE-Trust-Land~~]. In exchange for such signature from Kevin Funk, our daughters supervised visits only, would be removed, noted, item 7, of this Motion. Please see (APPENDIX F.)

16. Now, on May 25, 2013, is the LEASE effective date with the

CHARLES FUNK IRREVOCABLE TRUST LAND, lease with permanent easement. This is a ('Twenty (20) years LEASE AGREEMENT'). See (EXHIBIT-ONE).

17. And in June 7, 2013, the (MEMORANDUM OF LEASE AND RIGHT OF FIRST REFUSAL), was entered into, and executed by and between KEVIN B. FUNK, "CHARLES FUNK IRREVOCABLE TRUST - Trustee" / LESSOR and JAMES A. MOERKERKE and JOYCE A. MOERKERKE, LESSEES. Please see (EXHIBIT-TWO).

Beginning January 1, 2034, and before March 1, 2034, in the event Lessor desires to sell the premises, Lessor shall give written notice thereof to Lessee in the manner set forth in paragraph 19(c). See (EXHIBIT-ONE) at 5, item 19(c)

Lessees shall have the option for thirty (30) days following notice to them of the offer to purchase the premises, SUBJECT to the retention by Lessor of the easement referred to above. See (EXHIBIT-ONE) at 4, item 18.

18. That, on June 11, 2013, LEASE CONTRACT, was filed.

The Laws of the State of Montana shall govern the interpretation and enforcement of this agreement. Please see (EXHIBIT-ONE) at 5, item 19(d).

§ 72-38-812, Mont. Code Ann. Collecting trust property: A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee and to redress a breach of trust known to the trustee to have been COMMITTED by a former trustee. Please see (EXHIBIT-AA9).

19. And that, on July 9, 2013, the OPINION of the Montana Supreme Court, was filed; Cause No.: DA 13-0023, with regard to the appeal of the remand, dated July 19, 2012. But that, this "NONE-cite" OPINION, was never received and or addressed to: CHARLES FUNK IRREVOCABLE TRUST.

20. Now, on September 26, 2013, a SEQUESTER OF ASSETS was issued by the Montana Twentieth Judicial District Court, Lake County, Cause No.: DR-09-45; appointing RECEIVER, and [ORDERING] the

[DISTRIBUTION] and the [SALE] of the [IRREVOCABLE TRUST "LAND"], without the 'consent' of the ["TRUSTEE"] of the CHARLES FUNK IRREVOCABLE TRUST, Mr. Kevin B. Funk. Please see (APPENDIX G,)

This is the first time the name, (CHARLES FUNK IRREVOCABLE) TRUST was in the Cause No.: DR-09-45. But never in the CAPTION OF THE PLEADING or any Court ACTIONS, not known until ACTIONS to Criminal Cause No.: DC-16-200, and arresting the individual, Kevin Funk.

21. On December 31, 2014, JAMES A. MOERKERKE and JOYCE A. MOERKERKE, the LESSEES, named in item 17 above, [signed] BUY-SELL AGREEMENT (Land) with [a seller, (Carroll S. Kinney)] of West Venture Real Estate, LLC, [but] with no sellers signature, on the BUY-SELL AGREEMENT (Land). Please see (EXHIBIT-THREE).

This BUY-SELL AGREEMENT (Land), by the LESSEES, [is a breach] of the 'twenty (20) years LEASE AGREEMENT, mentioned in item 16' above and a violation of § 72-38-812, Mont. Code Ann. Because no authorization to distribute, or to exit the Trust, and or to sell the CHARLES FUNK IRREVOCABLE TRUST Land, from the Trustee / Lessor.

22. Now, on January 7, 2015, the PROPERTY TAX IS [billed] to, and paid by the (100%) owner - CHARLES FUNK IRREVOCABLE TRUST, KEVIN BRENT FUNK, TRUSTEE. Please see (EXHIBIT-FOUR).

23. On February 17, 2015, is the close date for this BUY-SELL AGREEMENT, [still] not authorized by the CHARLES FUNK IRREVOCABLE TRUST, Trustee. Please see (EXHIBIT-THREE).

24. That, on February 25, 2015, the Montana Twentieth Judicial District Court, Cause No.: DR-09-45, [gave] an ORDER AND RATIONALE APPROVING SALE OF REAL PROPERTY. Please see (EXHIBIT-FIVE).

No (REALTY-TRANSFER-CERTIFICATE), was signed or filed by the

Trustee, 100% owner, Distribution [CAN] only be made from the CHARLES FUNK IRREVOCABLE TRUST, of which there is no Trustee [AUTHORIZATION], to [DISTRIBUTE-or-to-SELL] the [Trust-Land].

As an example of the [seriousness] of the "REALTY TRANSFER CERTIFICATE, if it may please the Court, Kevin Funk, is enclosing a copy of that CERTIFICATE, and quote the following from that document:

The DEPARTMENT of Revenue will change the name on ownership [records] used for the assessment and taxation of real property when [this form] is fully and accurately completed and [signed].

Montana law [requires] this form be completed and may impose up to a \$500 penalty for [failure] to file a Realty Transfer Certificate (§ 15-7-305 and 310, Mont. Code Ann.). (emphasis added). Please see (EXHIBIT-SIX). Top right corner.

25. That, on May 4, 2014, WARRANTY DEED 541106 was filed. This denotes the Break and slander of TITLE held in CHARLES FUNK IRREVOCABLE TRUST. See (EXHIBIT-SEVEN).

Although, there was the signature of the Receiver, STEVE STAHLBERG, STAHLBERG, TAYLOR & ASSOCIATE, PC, as Receiver under the Montana Twentieth Judicial District Court, Lake County, Montana, Cause No.: DR-09-45, [but] there was [no] signature from buyer James Moerkerke and Joyce Moerkerke, P.O. Box 346, Stevensville, MT 59870.

26. That, July 29, 2015, is the Property Record Card that shows TITLE held in CHARLES FUNK IRREVOCABLE TRUST owner 100%. Last modified: July 1, 2015. 10:03:32 AM. Please see (EXHIBIT-EIGHT).

27. Now in October 16, 2015, the Property Tax statement [still] shows billing to the CHARLES FUNK IRREVOCABLE TRUST. Please see (EXHIBIT-NINE).

28. And that, on June 26, 2016, the Lake County Sheriff Deputies were [trespassing] and making an [illegal] arrest of the Trustee and Patent Claimant, Kevin Brent Funk, on the CHARLES FUNK IRREVOCABLE TRUST AND the FEDERAL LAND PATENT LAND. At the time of this arrest of the Trustee, Kevin Brent Funk, on this Land, the land in its entirety, is fenced, gated, locked, and posted [no trespassing].

29. Now, on November 29, 2016, the State and the Prosecution, admits and never cited any Constitutional or Statutory conferred power or authority to **severe** and **sell** TRUST LAND, in one of the Prosecution's Motion, during the Criminal proceeding, in Montana Twentieth Judicial District Court, Cause No.: DC-16-200. Please see (APPENDIX H)

30. That, also on November 29, 2016, in another motion, inter alia, the prosecution set in motion, the process of: (1) extinguishing a permanent easement; (2) forced the CHARLES FUNK IRREVOCABLE TRUST Trustee and Federal Land Patent claimant to concede the Land is not 100% owned. In the same Motion, the State Prosecution, **threaten** the following:

"If the Defendant **refuses** to admit that the property was properly sold to the victim in this case in spite of the evidence, the State **will use** the prior citations for **Criminal Trespass** to show the Defendant had knowledge that the property was no longer in his possession." See (APPENDIX-I) at 2.

Pursuant to § 70-20-308, Mont. Code Ann.: A Transfer of real property passes all easements attached thereto and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred for the benefit thereof at the time when the transfer was agreed upon or completed. Please see (EXHIBIT-AA9/A).

31. And that, on December 14, 2016, during a hearing for pretrial

conference, Mr. Funk again [notified] the Court and its Officer of Mr. Funk's substantial rights of multiple legal rights of legal and lawful ownership 100% Title Held in the CHARLES FUNK IRREVOCABLE TRUST and as FEDERAL LAND PATENT Claimant to the Land. Mr. Funk explained such, in depth to the point that the Court [concurrent]:

THE DEFENDANT: And the Trust was never named or served as a part of this lawsuit.

THE COURT: But I think your client is seeking to make it relevant because he's saying --

THE DEFENDANT: Yeah, it's relevant.

THE COURT: -- the property remained in the trust. Please see PRETRIAL CONFERENCE on December 14, 2016, Cause No.: DC-16-200 (REPORTER'S TRANSCRIPT) at 14, lines 3-9.

32. That, on December 16, 2016, during a hearing for the substitution of counsel, the State and Prosecution, is concealing evidence, tampering with the Public Record - Perpetrating a fraud upon the Court, at the Montana Twentieth Judicial District Court, Cause No.: DC-16-200: Failure to secure witnesses for testimony at trial.

(Defense Counsel) - DARROW: May I -- two other issues. One related to that. I did investigate that matter very recently and I will be submitting another exhibit that I don't yet but it is proof that Mr. Funk, in fact, was not always receiving his mail and that service from the Court was bouncing back. And, secondly --

(The Prosecution) - ESCHENBACHER: Which is irrelevant to this case.

DARROW: I think it goes to Kay Lynn Lee's credibility and she's stealing his land without providing service.

THE DEFENDANT: Exactly.

THE COURT: If there is a deed -- isn't it the Law that

everybody is on constructive notice of who owns that property if there is a deed recorded with the Lake County Land Records?

THE DEFENDANT: Again, § 70-20-101, Mont. Code Ann, was violated, no transfer in writing.

THE COURT: We're getting this a lot more complicated than it needs to be.

MR. ESCHENBACHER: And that's my fear. That's the objective of the defense is to make it more complicated. We need to keep focused on the issue.

THE DEFENDANT: The issue is that slandered title and breaking title. From that point forward you have absolutely no authority. You're a thief.

MR. ESCHENBACHER: That is not the issue.

THE DEFENDANT: It is the issue. Where is the signature from any action trustee to transfer that property of § 70-20-101, MCA? That's what you're going to jury instructions to set up the trial.

MR. DARROW: Your Honor, I do have two more things, actually, and one of them was what you mentioned. I believe I might need to have a discussion with my client and do additional research. I may submit supplemental jury instructions. I'll do that prior to -- Please see (REPORTER'S TRANSCRIPTS) at 50-52.

§ 72-38-209. Notice-method and time of giving(2): Notice must be given.

(b): by delivering a copy of the notice to the person being notified personally at least 14 days before the time set for the hearing, if known. Please see (EXHIBIT-AA10).

§ 72-38-207. Jury trial: There is no right to a jury trial in proceedings under this chapter concerning the internal affairs of trusts. Please see (EXHIBIT-AA11).

That, also during the same hearing Mr. Funk, requested that, the QUITCLAIM DEED, # 544793, update (EXHIBIT-V); CERTIFIED BUREAU OF LAND MANAGEMENT FEDERAL LAND PATENT, # 20762 (EXHIBIT-VI);

CERTIFIED BUREAU OF LAND MANAGEMENT FEDERAL LAND PATENT, 935508 (EXHIBIT-VII); EXHIBIT-"A" (Land Description) # 544793 (EX-VIII); Montana Certificate of Death, # 011673 (EXHIBIT-IX), and also, the QUITCLAIM DEED, # 546520, update (EXHIBIT-I); CERTIFIED BUREAU OF LAND MANAGEMENT FEDERAL LAND PATENT, # 20762 (EXHIBIT-II); CERTIFIED BUREAU OF LAND MANAGEMENT FEDERAL LAND PATENT, # 935508 (EXHIBIT-III); EXHIBIT "A" (Land Description) # 546520 (EXHIBIT-IV), and that, QUITCLAIM DEED # 544793 pages 5 are certified by the Lake County, STATE OF MONTANA. Also that, QUITCLAIM DEED # 546520 pages 4 are certified by the Lake County. STATE OF MONTANA, be admitted into evidence, of which, the Court CONCURED:

THE COURT: Well, the [THE-QUITCLAIM-DEED] is handwritten. And the date on it is the [31st-day-of-January, 2009]. It shows that you signed it [in-front-of-a-NOTARY] but doesn't say what day you it on. But it wasn't recorded until February 9th of 2016, right?

THE DEFENDANT: Again, the recording dates are irrelevant, your Honor.

THE COURT: So this ---

THE DEFENDANT: The execution date is what rules. It's Law. Please see (REPORTER'S TRANSCRIPT) at 14-15.

THE COURT: I have a number of documents here that counsel handed me at my request, including the quit claim deed that I just mentioned. Mr. Darrow, is it your understanding that your client wants to submit these as exhibits in this trial?

MR. DARROW: Yes, that is ...

THE COURT: I'm going to refer to this as [Court Exhibit 1] for purposes of this hearing -- and you can get copies of all of this at the conclusion of the hearing -- ... (REPORTER'S TRANSCRIPT) at 17-18.

But that, upon the receipt of QUITCLAIM DEED # 544793 pages 5, the said document, from the Montana Public Defender Office in

Helena, Montana, Mr. Funk ['noticed'] that, instead of [pages 5], Mr. Funk [only] received page 1. And that, also QUITCLAIM DEED, # 546520, pages 4, only page 1 [~~was-presented-to-the-the-Montana-Supreme-Court~~], from the Montana District Court. Which means, the remainder of the filed pages are missing. This error was, either done by the Montana District Court Clerk's Office, or the Montana District Court-Court Reporter's Office.

Furthermore, for some inexplicable reason, and to his [HORROR], Mr. Funk, also noticed vividly that, both of this filed pages, that was presented to the Montana Supreme Court, [~~has-been-altered-and-tampered-with~~]. For the sake of this EXPLANATION, please compare ORIGINAL CERTIFIED, the QUITCLAIM DEED, # 546520, update (EXHIBIT-I), and the [~~TAMPERED-EXHIBIT-I~~]. Compare also ORIGINAL CERTIFIED, 544793 QUITCLAIM DEED, update (EXHIBIT-V), and the [~~TAMPERED-EXHIBIT-V~~], all enclosed for the Court's convenience.

§ 45-7-208. Tampering with Public Records or Information:

(1) A person commits the offense of TAMPERING with public records or information if the person:

(a) knowingly makes a false entry in or false alteration of any record, document, legislative bill or enactment, or thing belonging to or received, issued, or kept by the government for information or record or required by law to be kept by others for information of the government.

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose that it be taken as a genuine part of information or records referred to in subsection (1)(a). Please see (EXHIBIT-AA12).

33. For prospective clients, Trust Attorney Don St. Peter gives information that indicates when money is paid for services to be rendered in a REVOCABLE LIVING TRUST that becomes a IRREVOCABLE TRUST upon the passing of the SETTLOR, the ASSETS in conjunction with the following purpose of the TRUST is:

(3) protect an inheritance from a beneficiary's creditors, a beneficiary's divorce or a spendthrift. Please see (EXHIBIT-BB1) at 2 = What are the Trustees duties?

34. The [CRUX] of Funk's argument has always been; and has consistently remained that: (1) the TRUST-PROPERTY , TITLE is held in the IRREVOCABLE TRUST; (2) the TRUST PROPERTY (~~has-never-been-terminated~~) after his father's death; therefore, DISTRIBUTION (~~has-not-taken-place~~). This means, the TRUST-PROPERTY [~~became~~] "IRREVOCABLE-and-UNAMENDABLE" UPON HIS FATHER'S death. This has been explained in the (EXHIBIT-E(1)) and (EXHIBIT-E(2)).

And that, against STATUTORY authority; and against all TRUST-DOCTRINE; and against the [~~said~~] LANGUAGE contained in the [TRUST-AGREEMENT], Kevin Funk wife's Attorney (Kay Lynn Lee), none-the-less, initiated [~~this-FRAUD~~] upon the Court, in the APPELLEE'S BRIEF, when she ARGUED:

A. KEVIN'S INHERITED PROPERTY TRANSFERRED TO HIM THROUGH A TRUST WERE PROPERLY INCLUDED IN THE MARITAL ESTATE.

Kevin's primary argument, revolves around the proposition that the real property he recieved from his father's Trust (6 years after he and Bernita married and 14+ years before their divorce) has [~~never-actually-been-transferred~~] to his ownership. The Trust speaks [~~for-itself~~], naming Kevin as the [~~sole-beneficiary~~] of the Trust and [~~the-Successor Trustee~~]; [~~his-primary~~] duty after the death of his Father would have been "to terminate the Trust", [~~which-apparently-he-never-actually-accomplished~~]. (emphasis added). Please see (APPENDIX-J) at 5.

And that, [~~this-double-edged~~] argument which initiated this fraud, seems to have [~~driven-home~~] Funk's primary argument, and the [~~onus~~] of the Montana Supreme Court, should have [~~settled~~] this [~~CIVIL~~] matter. But has instead led to [~~the-CRIMILIZATION~~] of this MATTER, and this illegal [~~CONVICTION~~] and this [~~illegal-INCARCERATION~~] of Mr. Kevin Funk, (the ~~Successor~~ - Trustee) of the CHARLES FUNK IRREVOCABLE TRUST Property.

35. And that, on December 19, 2016, during the first day of the criminal trial of Kevin Funk, over the CHARLES FUNK'S IRREVOCABLE

TRUST LAND and the FEDERAL LAND PATENT Land, at the Montana Twentieth Judicial District Court, Cause No.: DC-16-200, Kevin Funk wife's Attorney (Kay Lynn Lee), testimony confirms the **break** and **slander** of the TITLE in Trust - Successor Trustee, Kevin Funk, during a Recross Examination by Mr. Darrow:

MR. DARROW: So, yeah, it was technically on the books. It never got transferred from Kevin Funk --

MS. KAY LYNN LEE: Correct. Please (REPOTER'S TRANSCRIPT VOLUME I of II) at 180, lines 23-25.

Moreover, this BREAK and SLANDER of the TITLE actions, further compounds the ALTERING and the TAMPERING of the QUITCLAIM DEED, # 546520, update (EXHIBIT-I); and the QUITCLAIM DEED, # 544793, update (EXHIBIT-V), which included, but not limited to the REMOVING of the CERTIFIED BUREAU of Land MANAGEMENT FEDERAL Land PATENT, and the REMOVING of the LAKE COUNTY, STATE OF MONTANA SEALS, respectively; (EXHIBIT-I) and (EXHIBIT-V). Please see (this STATEMENT OF THE CASE) # 32, at page 15-16.

36. On December 18, 2018, to add [INSULT] upon [INJURY], the Montana Supreme Court, issued an ORDER, adverse to Kevin Funk's Primary Argument of exercising afforded RIGHTS contained in the IRREVOCABLE TRUST and FEDERAL LAND PATENT, of which were turned into a crime. In its ORDER, the Montana Supreme Court, simply DISMISSED Funk's appeal, without an OPINION or CITE any CONSTITUTIONAL and STATUTORY conferred POWER or AUTHORITY to support the ORDER. Please see (APPENDUX-A).

Congress has the sole power to declare the dignity and effect of titles emanating from the United States; and the whole legislation of the Federal Government in reference to the public lands, DECLARES THE PATENT THE SUPERIOR AND CONCLUSIVE EVIDENCE OF LEGAL TITLE; until its issuance, the fee is in the Government, which by the patent, passes to the grantee and he is entitled to recover the possession in ejectment.

Bagnell v. Broderick, Mo. 1839 38 U.S. 436, 13 Pet. 436, 10 L.Ed.235.

37. Having established that, the said Trust DID NOT TERMINATE upon the death of Defendant's Father, the late Mr. Charles Funk, but that, the Defendant, Mr. KEVIN FUNK, became TRUSTEE, to terminate, and given; and has TRUSTEE-POWERS, and that, the TRUST SHALL BECOME IRREVOCABLE and UNAMENDABLE UNTIL it terminates, pursuant to TRUST TERMS "NOT LIMITED TO". Moreso, Under 72-33-411, M.C.A., DEFENDANT STILL CONTINUES TO HAVE ALL POWERS, but again such TRUST WAS NOT TERMINATED, UNTIL IN THE JUDGEMENT OF THE TRUSTEE ONLY. NO ONE ELSE, has any such authority to interfere with the TRUSTEE AND THE TRUST. THEREFORE, the felony charge of CRIMINAL MISCHIEF, 45-6-101 M.C.A.

A person commits the offense of criminal mischief if the person knowingly or purposely;

(a) injure, damages, destroy any property of ANOTHER or public property without consent....

and the conviction under the same statute 45-6-101 M.C.A. is not merely erroneous, but illegal and void. And that, the incarceration, is also illegal.

And that, pursuant to 72-34-304 M.C.A.:

APPLICATION OF RULES GOVERNING TRUSTEES' POWERS.

An instrument that incorporates the powers provided in former TITLE 72, Chapter 21, ("Montana Trustees' Powers Act") SHALL be continued to refer to the powers provided in 72-34-306 through 72-34-316, through 72-34-323, 72-34-326

through 72-34-332, and 72-34-336 through 72-34-343. For this purpose, the Trustee's Powers under former Title 72, chapter 21, ("Montana Trustees' Powers Act") are not DIMINISHED and the Trustee is not REQUIRED to obtain Court APPROVAL for exercise of a Power for which Court approval was not required by former Law.

the Trustee is not required to obtain the Approval for anything.

Moreover under § 72-34-317, Mont. Code Ann.:

Management of property. The Trustee has the Power to manage, control, divide, develop, improve, exchange, partition, change of character of, or abandon Trust property or any interest therein.

the Trustee can develop, and or improve Trust property, as Mr. KEVIN BRENT FUNK, Able to do in this INSTANT CASE. And he does not REQUIRE [CONSENT] and or [COURT-APPROVAL]. (EXHIBIT-AA1) is also enclosed and attached for the Court's convenience.

Congress has the absolute right to prescribe the times, the conditions and the mode of transferring the national public lands, or any part of them, and to designate the person to whom the transfer shall be made and no state legislation can interfere with this right or embarrass its exercise.
Gibson v. Chouteau, Mo. 1872, 80 U.S. 92, 13 WALL, 92, 20 L.Ed. 534.
See also U.S. v. Board of Com'rs of Freemont County, Wyo.
C.C.A. Wyo. 1944, 145 F. 2d 329, certiorari denied 65 S. Ct. 563, 323 U.S. 804, 89 L. Ed. 641.

REASONS FOR GRANTING THE PETITION

The petition needs to be granted to restore the substantial rights that were removed. The exercise of rights afforded by the Federal land patent and Charles Funk Irrevocable Trust were turned into a crime, thus became a victim of financial exploitation.

The subversion of the exclusive authority granted to the Federal land patent claimant and Irrevocable Trust Trustee must be restored immediately. Information presented by Trust Company Trust officers and Trust Attorney's selling the service of a trust contract, deem a trust contract to be IRON CLAD.

Patent holder, Title HELD in the Charles Funk Irrevocable Trust 100%, THE ABSOLUTE OWNER, TRUSTEE and BENEFICIARIES on such LAND, CANNOT BE EJECTED OFF THE LAND OR BE LEGALLY ARRESTED for TRESPASSING on such LAND by anyone with a junior patent or title, color of title warranty deed or any type of document transfer of forced transfer shall be proof of FRAUD, thus, CANNOT TAKE POSSESSION of Irrevocable trust and Federal land patent LAND.

Additional protections provided by the United States Constitution ARTICLE I, Section 10. also as HELD BY THE COURT:

The "power to dispose of and make all needful rules and regulations, respecting the territory" or public domain, being expressly delegated by the constitution of the United States, it follows that the laws of Congress, made for the purpose of such disposition and for the COMPLETE INVESTITURE of the TITLE in the PURCHASER - DONEE, are made in pursuance of the powers delegated. Rose v. Buckland, 1856, 17 Ill. 311.

A Federal land patent - a grant of LAND is a public law standing on the STATUTE BOOKS of the State, is notice to every subsequent purchaser under ANY CONFLICTING SALE MADE AFTERWARD. A WARRANTY DEED CANNOT STAND AGAINST A LAND PATENT, as HELD by: Wineman v. Gartrell, 53 FED 697 2 U.S. App 581. 1892

HOW WILL THE WRIT AID IN THE COURT'S APPELLATE JURISDICTION?

The Writ will aid of the courts appellate jurisdiction because this instant case the writ involves a certified Bureau of Land Management-Federal Land Patents 20762 and 935508 original deed, update deed 546520 pages: 4, is recorded-Lake County, Polson, Montana. Please see EXHIBIT - I .

THE FEDERAL LAND PATENT-IRREVOCABLE TRUST CONTRACT deed protects life, liberty and property all without the Montana State District court and without the Montana Supreme Court Authority and jurisdiction.

This allodial land, HELD in allodial tenure, PATENT LAND HELD in absolute ownership is the highest and BEST TITLE AT LAW, CONCLUSIVE AND IS SUPERIOR to ANY other type of deed. Patent-deed recital conclusive, TRUST CONTRACT authority exclusive that, NO COURT in the United States has the constitutional or statutory conferred power of authority to: Interfere with a irrevocable trust contract, change, violate, transfer, remove, charge and incumber, divest of its patent or trust character, remove rights, privileges and immunities of the irrevocable trust-trustee, beneficiaries, patent holder designated heirs and assigns FOREVER, WITHOUT the express permission and SIGNATURE of the Federal land patent holder, irrevocable trust-successor trustee and beneficiaries.

"Being in FACT allodial in Nature"
Stanton v Sullivan 7a.696

SUCH is the courts concluding opinion of what a LAND PATENT IS.

EVERYONE, INCLUDING EVERYONE'S HEIR AND ASSIGNS FOREVER, TITLE and TRUST CONTRACTS ARE IN JEOPARDY from actions in cause DA 11 0209,

THE MONTANA SUPREME COURT WITHOUT Constitutional or Statutory conferred power or authority deleted and added language in 40-4-202 M.C.A.

"In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or substance contained therein, not to insert <246 P.3d 1045> what has been omitted or to omit what has been inserted."
2010 MT 267, St. ex rel. Dept. of Env'tl. Quality v. BNSF Ry. Co., ¶52: See M.C.A. 1-2-101. Role of Judge. (citations omitted)

ALLODIAL LAND is OWNED ABSOLUTELY without recognizing any Government or any superiors to whom any duty is due on account of the LAND.

No one can take the LAND for debt or taxes. Combination deed 526604 for DEEDS 544793 and 546520 UPDATE FEDERAL LAND PATENTS 20762 and 935508 CERTIFIED by the Bureau of Land Management and SIGNED by the President of the United States of America. The LAND, of the patent recitals described:

"For the sole use and benefit of the claimant".
"Free from all charge and incumbrance whatsoever",
"Has given and granted, and by these presents does give and grant unto the said claimant...and to the heirs of the said claimant the tract above described: to have and to hold the same, together with all the rights, priviledges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant...and to the heirs and assigns of said claimant...forever."
Please see (EXHIBIT-II) and (EXHIBIT-III).

The VALIDITY and such EXCLUSIVE AUTHORITY of the CLAIMANT ONLY of the Federal Land Patents is CONFIRMED as the Court has HELD:

"A patent is the highest evidence of title, and is conclusive as against the government and all claiming under junior patents or titles."
"The recitals of the patent are conclusive".
"It is made the duty of the President to issue patents for the lands so selected. This duty is cast, by the laws of the United States, upon the commissioner of the general land office, under the direction of the President."
"It is supposed the acts of the executive, within the general scope of its powers and by virtue of law, cannot be removed". "Though to some extent the letter of the law may not have been followed. There is no court of errors in which executive decisions that do not effect individual rights can be reversed."
"In no case can the United States acquire title by pre-emption".
United States v. Stone, 69 U.S. 525, 17 L.ED. 765, 1864 U.S. Lexis 448 6, [---8], [---9], [---12].

HOW THE COURT'S DISCRETIONAL POWERS ARE NEEDED?

The courts discretionary powers-needed in this instant case, because not only did the Montana court abuse their discretion, they used the abuse of power techniques to issue the ORDER: A receiver: to sequester the Charles Funk irrevocable trust - Federal land patent land against Constitutional or statutory conferred power or authority. The State CANNOT INFRINGE, The United States Constitution Article I, Section 10. Doctrine of freedom to contract, such as title held in the irrevocable trust, with terms for the trustee to exercise all the powers afforded "NOT LIMITED TO", regardless of change in law or rule of court. The trust cannot be forced on the BENEFICIARIES.

As such, the state has NO probable cause, needed for a warrant, thus the State CANNOT ARREST and CANNOT CHARGE the Charles Funk irrevocable trustee-successor TRUSTEE, BENEFICIARIES OR the Federal land patent CLAIMANT on the irrevocable trust and Federal land patent LAND.

In that, this is why the State DID NOT put the Charles Funk irrevocable trust NAME, the irrevocable trust successor trustee NAME and the Federal land patent Claimants NAME in THE CAPTION OF THE PLEADING in ANY court cause or on ANY warrant. Such shows the State VIOLATED the Charles Funk irrevocable trust due process.

My Father paid money for service to be rendered, but such service was NOT rendered as the State admits: "To sever a part of the trust and place it for sale;" such noted in MOTION [EXHIBIT-APPENDIX-H] Money paid for services not rendered is fraud.

Such court orders are in want of authority, thus VOID.

"Where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgement, until reversed is regarded as binding in every other court. But if it act without authority, its judgements and orders are regarded as nullities. They are not voidable, but simply void".

Wilcox v. Jackson 38 U.S. 498, 510, 10 L.Ed.264, 270, 1839 U.S.

The exclusive authority is held with the Federal land patent claimant and in the irrevocable trust-trustee per terms of the trust.

The court appointed receiver "to sever a part of the trust and place it for sale" is in want of authority, thus VOID.

"Similarly, if registers and receivers undertake to grant pre-emptions in land in which the law declares they shall not be granted, then they are acting upon a subject matter clearly not within their jurisdiction; as much so as if a court, whose jurisdiction is declared not to extend beyond a given sum, should attempt to take cognizance of a case beyond that sum".
Wilcox v. Jackson 38 U.S. 498, 510, 10 L.Ed. 264, 270, 1839 U.S.

Thus, the exceptional circumstances that exist, is manifested by the fact that, Mr. Funk, a citizen of this beautiful Country, is exercising the rights afforded by the Federal Land patents and the CHARLES FUNK IRREVOCABLE TRUST, which allows protection of assets from claims of the settlors heirs and a [DIVORCING-SPOUSE] of the beneficiary. This is noted in the Attorney's Pamphlet, provided by Attorney Don St. Peter. Please see (EXHIBIT-BB1).

"The claim and exercise of a Constitutional right cannot be converted into a crime." Miller v. United States, 230 F.2d 486, 489 (5th Cir. 1956).

ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR ANY OTHER COURT:

For judicial economy, and for expediency, Mr. Funk, who is unlearned in the science of the Law, believes very strongly that, the United States Supreme Court, the supreme Law, of this beautiful Country, holds all the aces, as Mr. Funk [WANTS-SO-BADLY-TO-PRESERVE-his-chance-at-"CRIMINAL APPEAL"], in this Honorable Court. In the spirit of independance, the afforded rights exercised are in the SOLE JUDGEMENT of the Irrevocable Trust-TRUSTEE and Federal Land Patent CLAIMANT.

REASONS FOR NOT GOING TO THE DISTRICT COURT IN WHICH
FUNK IS HELD:

Mr. Funk pleads and pray the Court that, he considers petitioning the Highest Court of this beautiful Land, because once again, he wants to PRESERVE his only chance at a 'CRIMINAL APPEAL.' As Mr. Funk, who has been ILLEGALLY stripped of his rights and then, ILLEGALLY imprisoned, does not want to be caught up in the Montana's jiberish schemes, as noted in the Montana 2012 Annotations 40-4-202 M.C.A., which has repeatedly been done to other people:

In re Marriage of Malquist, 227 M 413, 739 P2d 482,44
St. Rep. 1193 (1987),
Howard v. Dalio, 249 M 316, 815 P2d 1150 (1991),
Warnack v. Coneen Family Trust, 266 M 203, 879 P2d 715 (1994),
In re Marriage of Smith, 270 M 263, 891 P2d 522, 52 St. Rep.174, (1995),
followed in re Marriage of Griffin, 275 M 37, 909 P2d 707, 53 St. Rep.
28 (1996),
Harris, 2006 MT 63, 331 M 368, 132 P3d 502 (2006),

RELIEF BEING SOUGHT BY KEVIN FUNK

Upon this PETITION, the absolute owner, patent claimant, Charles Funk Irrevocable Trust Successor Trustee - Kevin Funk, Beneficiary, the individual Kevin Funk is seeking relief by way of 28 U.S.C. section 2257(a) because of Constitutional violation and or Constitutional Error, Substantive Due Process violation, removal of substantial rights afforded by the Federal Land Patents and Charles Funk Irrevocable Trust terms, moves this honorable court to: By Court ORDER, to enforce and have, so the Court will enjoin the performance of any acts by ANYONE which are NOT in the performance of the interests of the Patent Holder, IRREVOCABLE TRUST - Successor Trustee and Beneficiaries, ANY other BREACHES of ACTS DETRIMENTAL to the Trust Estate and Federal Land Patent Land-HELD in the Title of the Charles Funk IRREVOCABLE TRUST, to be prevented and VACATED, such by an INJUCTION, and ENFORCED by Court ORDER and such ORDER to prevent and, or RELEASE Kevin Funk from any ILLEGAL arrest and, or ILLEGAL INCARCERATION, TO RESTORE SUBSTANTIAL RIGHTS.

So, just think of ALL the other people, like KEVIN FUNK, that exercise their rights afforded by the U.S. CONSTITUTION, Federal Land Patent, Irrevocable Trust, Title and CONTRACTS contained therein, supposedly protected, in part, by the U.S. CONSTITUTION ARTICLE I Section 10, but be infringed and turned into a crime. Question is, are you going to stop this infringement, abuse of power and hostage incarceration?

JUST as we started with a question, we end with the SAME question.

I believe, as noted in the exercise of SOLE AFFORDED RIGHTS, the answer is obvious and simple.

Question asked, question answered.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*Federal Land Patent Holder
Charles Funk Irrevocable Trust, S.
Trustee Kevin Funk*

Date: March 13, 2019