

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JAN 29 2026

Shirley A. Johnson-Lopez
Clerk

Sheldon Dean Schneider, Pro-Se, *
An Individual, Plaintiff & Appellant, *

CAUSE: #31226

Vs. *

APPELLANT'S BRIEF

STATE OF SOUTH DAKOTA; *
KELLIE WASKO, Secretary of Corrections; *
TERESA BITTINGER, Warden; AARON HAYNES, *
Director of Health Services; VANESSA *
GEBES, Assistant Director of Health *
Services (MDSP); TAMMY DOYLE, ADA *
Coordinator (MDSP), *
Defendants & Appellees. *

APPEAL FROM THE CIRCUIT COURT OF MINNEHAHA COUNTY

HONORABLE JUDGE JENNIFER MAMMENG

Appellant: Sheldon Dean Schneider
1412 Wood Street
Springfield, SD 57062-2238
Pro-Se, An Individual.

* Attorney for Appellees:
* Amanda Miiller
* Deputy Attorney General
* 1302 E. HWY14, Suite #1
* Pierre, SD 57501-8501
*
*
*
*

NOTICE OF APPEAL WAS TIMELY FILED

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Casazza, 2000 SD 120 at ¶11, 616 N.W.2d at 875
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Sheldon Dean Schneider, Pro-Se,
An Individual, Plaintiff/Appellant,

Vs.

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KELLIE WASKO, Secretary of Corrections;
TERESA BITTINGER, Warden; AARON
HAYNES, Director of Health Services;
VANESSA GEBES, Assistant Director of
Health Services(MDSP); TAMMY DOYLE, ADA
Coordinator(MDSP),
Defendants/Appellees.

PRELIMINARY AND JURISDICTIONAL STATEMENT:

This is an Appeal of the “Memorandum Opinion and Order Granting Defendants’ Motion for Summary Judgment and Denying Plaintiffs Motion for Judgment on the Pleadings”, entered on the 23rd day of June, 2025, regarding the Second Judicial Circuit Court, Minnehaha County, in Case File No. 49CIV23-2221. The Appellant then filed a “Motion to Reconsider All Motions and Other Documents”, along with a “Motion for Judgment” , that were heard August 14th,2025, After Denial, Appellant filed a timely Notice of Appeal. Appellants filings are subject to the Mail Box Rule being he is Pro-Se and incarcerated; Appeal inadvertently went into default and is now excused from default buy this Honorable Court to file, Appellant Brief, Due Date January 21st, 2026. This Honorable Court possesses jurisdiction of this Matter Pursuant to SDCL § 15-26A, inter alia, and for Good Cause Shown.

STATEMENT OF THE ISSUES:

ISSUE 1:

THE ISSUE IS DID THE TRIAL COURT ERROR AND/OR ABUSE ITS DISCRETION IN GRANTING SUMMARY JUDGMENT AS A MATTER OF LAW.

The Trial Court granted Summary Judgment. However, the trial court argues genuine issues of Material Fact in its Memorandum Opinion, this precludes the Defendants Entitlement to Summary Judgment.

ISSUE 2:

THE ISSUE IS DID THE TRIAL COURT ERROR AND/OR ABUSE ITS DISCRETION GRANTING SUMMARY JUDGMENT, WHEN THERE ARE GENUINE ISSUES OF MATERIAL FACT AS TO WHETHER DEFENDANTS BREACHED ANY APPLICABLE DUTIES OF CARE OWED TO THE PLAINTIFF.

The Trial Court granted Summary Judgment. However, Defendants have acted in clear disregard of their respective Duties under the Law, by violating established policies and Abandoning and Breaching the Duty of Care owed to the Plaintiff.

APPLICABLE LAW:

COMES NOW, Sheldon Dean Schneider, the Appellant, Pro-Se, Respectfully Moves this Honorable Court to Liberally Construe "ALL" filed Documents, as to do Substantial Justice for the Pro-Se litigant, Appellant, Good Cause is Shown and this Request is Made in Good-Faith, Appellant, Assets and states as follows:

**Haines v. Kerner, 404 U.S. 519, 92S.Ct. 594, 30 L.Ed.2d 652 (1972)*(Pro-Se litigants pleadings are to be construed liberally and held to a less stringent standard than pleadings drafted by Lawyers; if a Court can reasonably interpret Pro-Se pleadings to state a cognizable claim on which litigant could prevail, it should do so despite failure to cite proper Legal Authority, confusion of Legal theories, poor syntax and sentence structure, or litigants unfamiliarity with pleading requirements). see e.g. *Boag v. MacDougell, 454 U.S. 364, 102S.Ct. 594, 70 L.Ed.2d 551 (1982)*; *Fazzomo v. Northeast Ohio Correctional Center, 473 F.3d 229 (6th Cir.2006)*; *Gomez-Diaz v. U.S., 433 F.3d 788 (11th Cir.2005)*.

WHEREFORE, Sheldon Dean Schneider, humbly Requests, Prays and Hopes that this Honorable Court "WILL" Liberally Construe "ALL" filed Documents, as to do Substantial Justice for the Pro-Se litigant, for Good Cause is Shown in the Best Interest of Justice. Plaintiff further Requests that this Order be continuing in affect.

Dated this 12th day of January, 2026.

Respectfully Submitted,

X: Sheldon Schneider
Sheldon Dean Schneider
1412 Wood Street
Springfield, SD 57062-2238
Pro-Se, An Individual.

STATEMENT OF CASE AND FACTS:

This case involves an amended “Complaint of Personal Injury and Violations of Civil and ADA Rights” filed by Plaintiff Sheldon Dean Schneider (Plaintiff). Plaintiff claims that Defendants State of South Dakota, Kellie Wasko, Teresa Bittinger, Aaron Haynes, Vanessa Gebes, and Tammy Doyle, individually and in their official capacities (collectively Defendants), failed to provide adequate medical care and treatment to him, and that Defendants have violated the American with Disabilities Act (ADA) as to their conduct towards him. Plaintiff asserts claims of 1) Negligence; 2) Negligence per se; 3) violation of the ADA; 4) an Eighth Amendment claim under 42 U.S.C. §§ 1983 and 1985; and 5) a claim for “Wrongful Acts.” Plaintiff seeks a monetary award of \$10 million dollars as well as “punitive damages, presumed damages, hedonic damages, and compensatory damages, as applicable” in an unspecified amount.

This matter came before the Court on April 2nd, 2025, to address the parties motions, Plaintiff’s Motion for Judgment on the Pleadings, Plaintiff’s Motion for Expert Witness, Plaintiffs Motion for Specific Discovery, Plaintiff’s Motion to Strike, Plaintiffs Motion for Appointment of Counsel, and Defendants’ Motion for Summary Judgment. Plaintiff appeared Pro-Se via Zoom. Defendants were represented at the Hearing by Assistant Attorney General Ryan McFall. Plaintiff’s Motion for Expert Witness, Plaintiffs Motion for Specific Discovery, Plaintiff’s Motion to Strike, and Plaintiff’s Motion for Appointed Counsel were orally denied at the conclusion of the Hearing. The Court took Plaintiff’s Motion for Judgment on the Pleadings and Defendants’ Motion for Summary Judgment under advisement. After considering the parties’ briefs, oral arguments, and applicable authorities, the Court granted Defendants Motion for Summary Judgment and denies all of Plaintiffs Motions. (Plaintiff wants to make the South Dakota Supreme Court aware Plaintiff also filed Motion to Oppose Defendants Summary Judgment with supporting Brief on March 24th, 2025, these Documents were never heard completely over looked, even though the Plaintiff used them in his oral arguments during April 2nd, 2025 Hearing). On July 7th, 2025, Plaintiff filed Motion to Reconsider All Motions and Other

Documents along with several other Motions including Motion to Withdrawal Plaintiffs Judgment on the Pleadings and Fully Entertain Plaintiffs Motion and Brief in Response/Oppose to Defendants Summary Judgment and a Motion for Hearing. Plaintiff received Notice there will be a Hearing to Reconsider All Motions and Other Documents on August 14th,2025, the Court then Denied all newly filed Motions and the Motion to Reconsider at the Hearing. Plaintiff's Notice of Appeal was timely filed on August 25th,2025. Plaintiff was never Notified by the Second Judicial Circuit Court, Minnehaha County, or any Court, that his Notice of Appeal was accepted with deadlines for filing. Due to never being Notified Plaintiffs Appeal went into Default. Plaintiff received letter to relieve default on December 29th,2025, Plaintiff timely filed a Motion and Affidavit to relieve default. Note: Plaintiff/Appellant still has not received Transcripts for April 2nd,2025, and August 14th,2025 Hearings as requested in support of his Appeal; Nor has he received a generated order of denial for his Motion for Judgment. Appellant hereby submits his Appellant Brief.

FACTUAL BACKGROUND:

Plaintiff arrived as an inmate at the South Dakota State Penitentiary on May 22nd, 2023. He asserts that he arrived at the penitentiary with a 30% break in the right hand/middle finger with a protective brace and that the South Dakota State Penitentiary would not allow the Plaintiff to have the protective brace, their reasoning was it was metal. They took the brace and did not provide a functional equivalent brace for the Plaintiff. He relayed to the nurse/med-tech his medications of Oxycodone, 3 times a day, 900mg Gabapentin, 3 times a day, and 20mg IR Methylphenidate, 3 times a day. Plaintiff states he notified health services of the need to continue said medications and/or need for titration and the oncoming of serious withdrawals, which Plaintiff would need to be monitored for serious side effects. Plaintiff asserts he was denied adequate reasonable and necessary access to medicine to prevent withdrawals and serious pain from his medical conditions. Per policy protocol Plaintiff was to be seen within 10days of intake. As record reflects it took 16days for him to talk to a health care provider about his concerns. Plaintiff claims his fundamental right to health care under the South Dakota Constitution was violated. Defendants failed to properly follow mandatory policy protocol by waiting 16days instead of 10days for Plaintiff to see the Provider. Plaintiff was Ordered to be titrated off Gabapentin by Dr. Rector; Dr. Aaron Haynes approved this Ordered then denied it without cause. Plaintiff asserts that this resulted in serious withdrawals that caused multiple seizures and severely re-injuring or worsening of the break in his right hand/middle finger. He asserts this caused him excruciating pain in the Plaintiff's nerves, neck, left shoulder, and right hand/middle finger. He states the Defendants did not follow medical orders and did not administer withdrawal medications. Plaintiff claims to have suffered obvious signs of a injury and serious withdrawal that even a lay person could tell the Plaintiff was suffering and not ok. He Asserts that subsequent X-Rays show that his fracture was worsened to 70% and that when he was seen at Avera Orthopedics, he was told he had taken too long to have appropriate surgery. He claims he lost the opportunity to have his hand fixed surgically. He further states Defendants failed to provide adequate medical care to Plaintiff causing a denial of equal protection. On

November 6th, 2023, Plaintiff was smashed in a crash gate by C.O. Payton, again, re-breaking Plaintiff's right hand/middle finger this time from a 70% break to a nearly 90-100% break. Plaintiff also states the same day C.O. Payton smashed the chemical dependency counselor "Brandi" in the crash gate. On February 26th, 2024, Plaintiff for the third time was cold turkeyed from his medications of 900mg Gabapentin, 3 times a day, and 20mg IR Methylphenidate, 3 times a day, with adverse side effects. Plaintiff also alleges that he has a disability and Defendants have failed to provide reasonable accommodations under the ADA. He brings claim under 42 U.S.C. §§ 1983 and 1985 alleging that the Defendants were deliberately indifferent in their lack of medical care and services.

Defendants move for Summary Judgment alleging that there are no disputed material facts, and they are entitled to judgment as a Matter of Law. Trial Court granted the Defendants Motion for Summary Judgment. Plaintiff Moved to Motion to Reconsider All Motions and Other Documents and a Motion for Judgment, based on perjury by Aaron Haynes and submitted Medical records. Trial Court denied Plaintiff's Motions August 14th, 2025. Plaintiff timely Appeals August 25th, 2025. Plaintiff relieved appeal from default and hereby submits his Appellant Brief.

ARGUMENT:

ISSUE # 1:

THE ISSUE IS DID THE TRIAL COURT ERROR AND/OR ABUSE ITS DISCRETION IN GRANTING SUMMARY JUDGMENT AS A MATTER OF LAW.

The question presented by such a Motion is whether or not there is a genuine issue of fact. It does not contemplate that the Court shall decide such issue of fact, but shall determine only whether one exists. The Trial Court in this case chose to enter a Memorandum Opinion and argue genuine issues of material fact in the Defendants favor, which is not appropriate and precludes the Defendants entitlement to Summary Judgment.

There are certain guiding principles on the use of Summary Judgment that have evolved. They are: 1) The evidence must be viewed most favorable to the non-moving party; 2) The burden of proof is upon the movant to show "clearly" that there is no genuine issue of material fact and that they are entitled to Judgment as a Matter of Law; 3) Though the purpose of the rule is to secure a just, speedy and inexpensive determination of the action, it was never intended to be used as a substitute for a Court Trial by Jury where "any" genuine issue of material fact exists. 4) A surmise that a party will not prevail upon trial is Not sufficient basis to grant the Motion on issues which are not shown to be sham, frivolous or so unsubstantial that it is obvious it would be futile to try them. 5) Summary Judgment is an extreme remedy and should be awarded only when the truth is clear and reasonable doubts touching the existence of a genuine issue as to material fact should be resolved against the movant. 6) Where, However, no genuine issue of fact exists it is looked upon with favor and is particularly adaptable to expose sham claims and defenses.

Summary Judgment may be used in all types of litigation, but there are some kinds of cases which lend themselves more readily to Summary adjudication than others. Statistics show it is granted more frequently in actions on notes and for debts than in other kinds of cases. *Three classes of

litigation which are “NOT” usually suited for Summary disposition are *1) Negligence Actions, 2) Actions involving state of mind, 3) equitable actions.

*Summary Judgment is generally Not feasible in Negligence cases because the standard of the reasonable man must be applied to conflicting testimony. Issues of Negligence and such related issues as wanton or contributory negligence are ordinarily not susceptible of Summary adjudication either for or against a claimant and should be resolved by Trial in the ordinary manner. Summary Judgment should Not be granted on the ground of contributory negligence except in extraordinary, unusual, or rare case where the facts are conceded or demonstrated beyond reasonable question and show a Right to Summary Judgment with such clarity as to leave No room for controversy. Contributory negligence to bar recover must be the proximate cause of the injury and since both are fact questions generally are Not subject to Summary adjudication.

*The South Dakota Supreme Court has repeatedly said that issues of negligence, contributory negligence, and the comparative extent thereof, and proximate cause are ordinarily questions of fact and it must be a clear case before a trial Judge is “justified” in taking these issues from the Jury. It is only when the evidence is such that reasonable men can draw but one conclusion from facts and inferences that they become a Matter of Law and this occurs rarely.

For purposes of the “Memorandum Opinion and Order Granting Defendants Motion for Summary Judgment and Denying Plaintiffs Motion for Judgment on the Pleadings” the Court argues genuine issues of material fact in the Defendants favor. See *Howard v. Missouri Bone and Joint Center, Inc.*, 615 F.3d 991, 995 (8th Cir. 2010). “The Court must not engage in a weighing or evaluation of the evidence or consider questions of credibility.” *Howard*, 615 F.3d at 995 (*cleaned up*). Which the Courts Memorandum Opinion in this case clearly does.

Defendant, Dr. Aaron Haynes violated established policy, denied Plaintiff a functional equivalent brace for his injured right hand/middle finger, and abruptly discontinued the Plaintiffs prescribed medications. Defendants Admit to discontinuing Plaintiffs medications in Plaintiffs Request

for Admissions. Dr. Aaron Haynes failed to use the Least Restrictive Means available to treat the Plaintiffs injuries and discontinue the Plaintiffs medications causing further injury. “Proximate cause is an immediate cause which, in natural or probable sequence, produces the injury complained of.” *Cooper v. Brownell*, 923 N.W.2d 821, 824 (S.D. 2019)(Quoting *Martino v. Park Jefferson Racing Ass’n*, 315 N.W.2d 309, 314 (S.D. 1982). “Such cause need not be the only cause of a result. It may act in combination with other causes to produce a result.” *Howard v. Bennett*, 894 N.W.2d 391,395 (S.D. 2017)(Quoting *Hamilton v. Sommers*, 855 N.W.2d 855, 867 (S.D. 2014). “To be actionable the cause of harm must be a substantial factor in bringing about the harm.” *Mulder v. Tague*, 186 N.W.2d 884, 887 (S.D. 1971). Plaintiff submitted Medical Records of an MRI that showed injury and cause of condition. Dr. Aaron Haynes said these MRI’s were negative under Oath in the Plaintiffs Request for Admissions committing perjury. Plaintiff the filed a Motion of Notice of Perjury, followed by a Motion for Judgment after Dr. Aaron Haynes re-instated Gabapentin based on those same MRI Records he lied about. “Summary Judgment is Not the proper method to dispose of factual questions.” *Bozied v. City of Brookings*, 2001 S.D. 150, ¶8, 638 N.W.2d 264, 268. “Summary Judgment is an extreme remedy , [and] is Not intended as a substitute for Trial.” *Discovery Bank v. Stanley*, 2008 S.D. 111, ¶19, 757 N.W.2d 756, 762. Dr. Aaron Haynes and Defendants failed to use the Least Restrictive Means available and violated established policy while doing it, being deliberately indifferent.

Throughout the Courts Memorandum Opinion there are multiple genuine issues of material fact that they are clearly arguing in the Defendants favor. This action precludes a grant of Summary Judgment. To Further argue in the Plaintiffs favor, Pro-Se Plaintiff inadvertently filed “Judgment on the Pleadings” feeling that the Defendants failed to accurately plead their defense. Pro-Se Plaintiff, realizing his error withdrew his Motion. However, the Defendants Counsel responded by setting forth All the genuine issues of material facts that remained for this case to go to Trial, **I Agreed.**

The Supreme Court of the State of South Dakota must review a Circuit Courts entry of Summary Judgment under the de novo standard of review. *SDCL § 15-6-56(c)*.

The South Dakota Supreme Court's well-settled standard of review for a Motion for Summary Judgment provides:

Summary Judgment is Authorized "if pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is No genuine issue as to any material fact, and that the moving party is entitled to judgment as a Matter of Law." We will affirm only when there are No genuine issues of material fact, and Legal questions have been correctly decided. All reasonable inferences drawn from the facts must be viewed in favor of the non-moving party. The burden is on the moving party to clearly show an absence of any genuine issue of material fact and an entitlement to judgment as a Matter of Law.

Mueller v. Cedar Shore Resort, Inc., 2002 SD 38, ¶10, 643 N.W.2d 56, 62 (Quoting *Hayes v. N. Hills General Hosp.*, 1999 SD 28, ¶12, 590 N.W.2d 243, 247 (Quoting *SDCL § 15-6-56(c)*)). There Must be No material facts at issue, and there Must "be No genuine issue on the inference to be drawn from those facts." *A-G-E Corp. v. State*, 2006 SD 66, ¶17, 719 N.W.2d 780, 786 (citations omitted).

Appellant also wants to make Note to this Honorable Court, that there are multiple Exhibits, Affidavits, and Video evidence submitted in this case file. Appellant does Not understand how this was overlooked to grant the Defendants Summary Judgment in the Negligence and 1983 & 1985 Actions.

Appellant, Schneider, maintains that the Circuit Court erred by granting Summary Judgment for the Defendants because there material facts in dispute. As the Record reflects there are disputed material facts that the Court resolved in its Memorandum Opinion, as well as the Defendants response to the Plaintiffs "Judgment on the Pleadings", this would preclude the defendants entitlement to Summary Judgment. These dispute material facts precluded Summary Judgment for the Defendants in this Action. The Supreme Court of the State of South Dakota Must Reverse the Circuit Court's grant of Summary Judgment.

ISSUE # 2:

THE ISSUE IS DID THE TRIAL COURT ERROR AND/OR ABUSE ITS DISCRETION GRANTING SUMMARY JUDGMENT, WHEN THERE ARE GENUINE ISSUES OF MATERIAL FACTS AS TO WHETHER DEFENDANTS BREACHED ANY APPLICABLE DUTIES OF CARE OWED TO THE PLAINTIFF.

As stated elsewhere herein, Defendant, Dr. Aaron Haynes violated established policy, denied Plaintiff a functional equivalent brace for his injured right hand/middle finger, and abruptly discontinued the Plaintiffs prescribed medications. Defendants Admit to discontinuing Plaintiffs medications in Plaintiffs Request for Admissions. Dr. Aaron Haynes failed to use the Least Restrictive Means available to treat the Plaintiffs injuries and discontinue the Plaintiffs medications causing further injury. Also, Plaintiff submitted Medical Records of an MRI that showed injury and cause of condition. Dr. Aaron Haynes said these MRI's were negative under Oath in the Plaintiffs Request for Admissions committing perjury. Plaintiff filed a Motion of Notice of Perjury, followed by a Motion for Judgment after Dr. Aaron Haynes re-instated Gabapentin based on those same MRI Records he lied about under Oath. All of the above Acts breached the Duty of Care owed to the Plaintiff, by Deliberate Indifference to the Plaintiffs serious medical needs. Dr. Aaron Haynes and Defendants are liable and Not entitled to any form of Immunity.

The Doctrine of Sovereign Immunity, as established in the common Law and the South Dakota Constitution, prevents the governing acts of the State, its agencies, other public entities, and their employees from attack in Court without the States consent. *Casazza, 2000 SD 120 at ¶11, 616 N.W.2d at 875*. However, Not all acts performed by State employees are governing Acts. *Wilson v. Hogan, 473 N.W.2d 492 (S.D. 1991)*. "Whether a State employee, who is sued in an individual capacity, is entitled to immunity depends upon 'the function performed by the employee.'" *Casazza, 2000 SD 120 at ¶11, 616 N.W.2d at 875*. State employees are immune from suit when they perform discretionary functions,

but Not when they perform ministerial functions. *Kruger v. Wilson*, 325 N.W.2d 851 (S.D. 1982). The distinction between the two was explained in *Kyllo v. Panzer*, 535 N.W.2d 896, 902 (S.D. 1995).

In *National Bank of South Dakota v. Leir*, 325 N.W.2d 845 (S.D. 1982), this Court explained the distinction between the two classifications in conjunction to liability. This Court stated, “[immunity] extends to a governmental employee who, while acting within the scope of his employment, exercises a discretionary function.” *Id* at 848. (citations omitted). State employees are cloaked in sovereign immunity when performing discretionary acts because “such discretionary acts participate in the States sovereign policy-making power.” *Ritter v. Johnson*, 465 N.W.2d 196, 198 (S.D.1991). Factors to be considered in determining a discretionary function are:

- 1) The nature and importance of the function the officer is performing;
- 2) The extent to which passing judgment on the exercise of discretion by the officer will amount necessarily to passing judgment by the Court on the conduct of a coordinate branch of government;
- 3) The extent to which the imposition of liability would impair the free exercise of his discretion by the officer;
- 4) The extent to which the ultimate financial responsibility will fall on the officer;
- 5) The likelihood that harm will result to members of the public if the action is taken;\
- 6) *The nature and seriousness of the type of harm that may be produced;
- 7) The availability to the injured party of other remedies and other forms of relief.

Leir, 325 N.W.2d at 848 (citing *Restatement (Second) of Torts*, § 895D, comment f (1979)).

Furthermore, this Court has consistently held sovereign immunity barred a cause of action against the State where the State was the real party interest. *High-Grade Oil*, 295 N.W.2d 736; *Wise Granite Co. v. State*, 54 S.D. 482, 223 N.W. 600 (1929).

Nevertheless, *Leir* reaffirmed the co-existence of case precedent holding employees responsible for their negligence in performing ministerial tasks. It stated, “a State employee who ‘fails to perform a merely ministerial Duty, is liable for the proximate results of his failure to any person to whom he

owes performance of such duty.’” *Leir*, 325 N.W.2d 845 (Citing *Conway v. Humbert*, 82 S.D. 317, 145 N.W.2d 524 (1966); *Walters v. City of Carthage*, 36 S.D. 11, 153 N.W. 881 (1915); *Ruth*, 9 S.D. at 90, 68 N.W. at 190)). This Court ultimately held employees liable for consequences of their negligent Acts. *Leir*, 325 N.W.2d at 848-49.

The South Dakota Supreme Court defines ministerial Acts in *Ritter*, explained that “a ministerial Act is the *simple carrying out of policy already established... so that permitting State employees to be held liable for negligence in the performance of merely ministerial duties within the scope of their Authority does Not compromise the sovereignty of the State.” *Ritter*, 465 N.W.2d at 198 (citation omitted).

The determination as to whether an act is discretionary or ministerial requires an individualized inquiry in each case:

The determination as to whether an official has acted in his or her discretion or capacity, and therefore is entitled to immunity, is Not subject to a fixed, invariable rule, but instead requires a discerning inquiry into whether contributions of immunity to effective government in the particular context outweigh the perhaps recurring harm to individual citizens....

The view has been expressed that, in the final analysis, the decision as to whether a public official’s Acts are discretionary or ministerial Must be determined by the facts of each particular case after weighing such factors as the nature of the officials duties, the extent to which the acts involve policymaking [or] the exercise of professional expertise and judgment, and the likely consequences of withholding immunity.

Hansen, 1998 SD 109 at ¶23, 584 N.W.2d at 886(Quoting 63C Am.Jur.2d, *Public Officers and Employees* § 327, at 775-776 (1997)).

As the Record reflects Dr. Aaron Haynes and Defendants, deliberately violated established Policy, denied Plaintiff a functional equivalent brace for his injured right hand/middle finger, and abruptly discontinued the Plaintiffs prescribed medications. Dr. Aaron Haynes and Defendants failed to

use the Least Restrictive Means available to treat the Plaintiff, as a direct result causing harm. This Act is ministerial in application and function and would deny the Defendants any form of immunity. These acts would in fact make them liable for their negligent conduct.

CONCLUSION:

Appellant has clearly demonstrated two valid issues, which precludes Defendants entitlement to Summary Judgment. Defendants have acted in clear disregard of their respective Duties under the Law, by violating established policies and abandoning and breaching the Duty of Care owed to the Plaintiff.

Appellant, Sheldon Dean Schneider, maintains that the Circuit Court erred by granting Summary Judgment for the Defendants because there are material facts in dispute. As shown in the Record there are disputed material facts that the Court resolved in its Memorandum Opinion, this would preclude the Defendants entitlement to Summary Judgment. These disputed material facts preclude and prevent Summary Judgment for the Defendants in this Action. The Supreme Court of the State of South Dakota Must Reverse the Circuit Court's Grant of Summary Judgment.

OATH AND DECLARATION:

This is being Respectfully submitted, filed, signed and sworn to under the penalty of perjury,
Pursuant to SDCL § 18-7-6 and 28 U.S.C. § 1746 on this 12th day of January, 20 26.
Dated this 12th day of January 2026.

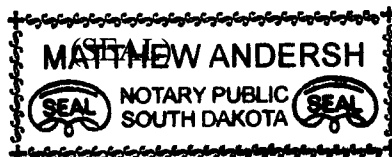
Respectfully Submitted,

X: Sheldon Schneider
Sheldon Dean Schneider
1412 Wood Street
Springfield, SD 57062-2238
Pro-Se, An Individual.

Sworn/Affirmed Before me this 12th day of January, 20 26.

Matthew Andersh
NOTARY PUBLIC

My Commission Expires May 12, 2031
NOTARY COMMISSION EXPIRES



CERTIFICATE OF COMPLIANCE:

Pro-Se Appellant did his absolute best to follow Certificate of Compliance Pursuant to SDCL § 15-26A-66(b)(4), the undersigned does hereby certify that the length of this Brief complies with the type and volume limitations set forth in SDCL § 15-26A-66(b)(2), Appellant, used Word Processing system to prepare this Brief.

Dated this 12th day of January, 2026.

Respectfully Submitted,

X: Sheldon Schneider

Sheldon Dean Schneider
1412 Wood Street
Springfield, SD 57062-2238
Pro-Se, An Individual.

CERTIFICATE OF SERVICE:

The undersigned hereby certifies that on the day below, a true and correct copy of Appellant's Brief with Appendix was served/sent by depositing same into the U.S. Postal Service through the prisons internal mail system postage prepaid either by me or the institution to:

CC:

Amanda J. Miiller
Deputy Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501

Second Judicial Circuit
Minnehaha County Clerk
425 N. Dakota Avenue
Sioux Falls, SD 57104-2470

South Dakota Supreme Court
Clerk of the Supreme Court
500 East Capitol Avenue
Pierre, SD 57501-5070

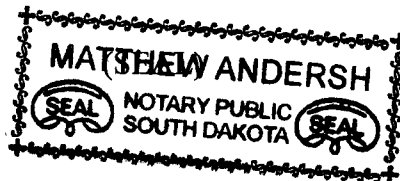
Dated this 12th day of January, 20 26.

Respectfully Submitted,

X: Sheldon Dean Schneider
Sheldon Dean Schneider
1412 Wood Street
Springfield, SD 57062-2238
Pro-Se, An Individual.

Sworn/Affirmed Before me this 12th day of January, 20 26.

Matthew Andersh
NOTARY PUBLIC
My Commission Expires May 12, 2031
NOTARY COMMISSION EXPIRES



APPENDIX - TABLE OF CONTENTS:

1. Memorandum Opinion (File 49CIV23-2221, Appeal File # 31226).....	1
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SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

IN THE SUPREME COURT

DEC 19 2025

OF THE

STATE OF SOUTH DAKOTA

Shirley A. Johnson Legal
Clerk

* * * *

SHELDON DEAN SCHNEIDER,
Plaintiff and Appellant,
vs.

ORDER EXCUSING DEFAULT IN
SERVICE AND FILING OF
APPELLANT'S BRIEF

STATE OF SOUTH DAKOTA;
KELLIE WASKO, Secretary of
Corrections; TERESA BITTINGER,
Warden; AARON HAYNES, Director of
Health Services; VANESSA GEBES,
Assistant Director of health Services)
(MDSP); TAMMY DOLYE, ADA)
Coordinator (MDSP),)
Defendants and Appellee.)

#31226

Appellant served and filed a motion and affidavit in support thereof to excuse the default in service and filing of appellant's brief. No response was served and filed. The Court considered the motion and being fully advised in the premises, it is

ORDERED that said motion is granted, and appellant's brief is due for service and filing on January 21, 2026.

DATED at Pierre, South Dakota, this 19th day of December, 2025.

BY THE COURT:

ATTEST:

[Signature]

Clerk of the Supreme Court
(SEAL)

[Signature]

Steven R. Jensen, Chief Justice

PARTICIPATING: Chief Justice Steven R. Jensen and Justices Mark E. Salter, Patricia J. DeVaney, Scott P. Myren and Robert Gusinsky.

STATE OF SOUTH DAKOTA >
COUNTY OF MINNEHABA >SS

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

Sheldon Dean Schneider, At-Se,
An Individual, Plaintiff,
Vs.

CAUSE: 49CIV23-2221

STATE OF SOUTH DAKOTA; KELLIE
WASKO, Secretary of Corrections;
TERESA BITTINGER, Warden; AARON
HAYNES, Director of Health Services;
VANESSA GEBES, Assistant Director
of Health Services (MDSP); TAMMY DYLE,
ADA Coordinator (MDSP),
Defendants.

ORDER GRANTING
MOTION TO RECONSIDER ALL
MOTIONS AND OTHER
DOCUMENTS

Based upon the herein Filed "Motion to Reconsider All Motions
and Other Documents" and For Good Cause Shown IT IS HEREBY

ORDERED, that the Plaintiff's Motion to Reconsider All Motions and
other Documents is hereby Granted;

IT IS FURTHER ORDERED, that Honorable James Power returns as
presiding Judge and "Re-Hear" All of the Plaintiff's Motions and
Other Documents; All this is,

DONE AND ORDERED, in the Second Judicial Circuit, Minnehaha County,
Sioux Falls, SD on this _____ day of _____, 2025.

Honorable Circuit Court Judge

Attest:

By:

Denied: 08/14/2025

/s/ Mammenga, Jennifer

(SEAL)

STATE OF SOUTH DAKOTA)
COUNTY OF MINNEHABA) SS

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

Sheldon Dean Schneider, Pro-Se,
An Individual, Plaintiff,
Vs.

CAUSE: 49CIV23-2221

STATE OF SOUTH DAKOTA; KELLIE
WASKO, Secretary of Corrections;
TERESA BITTINGER, Warden; AARON
HAYNES, Director of Health Services;
VANESSA GEBES, Assistant Director of
Health Services (MDSP); and TAMMY DOYLE,
ADA Coordinator (MDSP),

ORDER GRANTING PLAINTIFFS OBJECTIONS
TO DEFENDANTS NOTICE OF ENTRY
OF MEMORANDUM OPINION AND ORDER
GRANTING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND DENYING
PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS

Defendants,

Based upon the Filed "Motion of Objections to Defendants Notice
of Entry of Memorandum Opinion and Order Granting Defendants
Motion For Summary Judgment and Denying Plaintiffs Motion For
Judgment on the Pleadings", inter alia, and For Good Cause Shown
in the Best Interest of Justice, IT IS HEREBY

ORDERED, that the Plaintiffs Objections are hereby Granted;

IT IS FURTHER ORDERED, that Honorable James Power will
return as presiding Judge and "RE-HEAR" All of the Plaintiffs
Motions and other Documents; All this is,

DONE AND ORDERED, in the Second Judicial Circuit, Minnehaha County,
Sioux Falls, SD on this _____ day of _____, 2025.

Denied: 08/14/2025

/s/ Mammenga, Jennifer

Honorable Circuit Court Judge

Attest:

By:

(SEAL)

STATE OF SOUTH DAKOTA)
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

Sheldon Dean Schneider, Pro-Se,
An Individual, Plaintiff,
Vs.

CAUSE: 49CIV23-2221

ORDER GRANTING

STATE OF SOUTH DAKOTA; KELLIE
WASKO, Secretary of Corrections;
TERESA BITINGER, Warden; AARON
HAYNES, Director of Health Services;
VANESSA GEBES, Assistant Director
of Health Services (MOSP); TAMMY DOYLE,
ADA Coordinator (MOSP),

WITHDRAWAL OF JUDGMENT ON THE
PLEADINGS AND FULLY ENTERTAINING
PLAINTIFFS MOTION AND BRIEF IN
RESPONSE/OPOSE TO DEFENDANTS

Defendants.

SUMMARY JUDGMENT

Based upon the Filed "Motion to Withdrawal Plaintiffs Judgment on the Pleadings and Fully Entertain Plaintiffs Motion and Brief in Response/Opose to Defendants Summary Judgment", inter alia, and For Good Cause Shown in the Best Interest of Justice, IT IS HEREBY

Ordered, that the Plaintiffs above-mentioned Motion is hereby Granted;

IT IS FURTHER ORDERED, that the Plaintiffs Judgment on the Pleadings is Withdrawn and the Court will Fully Entertain Plaintiffs Motion and Brief in Response/Opose to Defendants Summary Judgment with All supporting Documents; All this is,

DONE AND ORDERED, in the Second Judicial Circuit, Minnehaha County, Sioux Falls, SD on this ____ day of ____, 2025

Denied: 08/14/2025

/s/ Mammenga, Jennifer

Honorable Circuit Court Judge

Attest:

By:

(SEAL)

STATE OF SOUTH DAKOTA)
COUNTY OF MINNEHAHA) ss

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

Sheldon Dean Schneider, Pro Se,
An Individual, Plaintiff

CAUSE: 49CIV23-2221

Vs.

ORDER GRANTING

STATE OF SOUTH DAKOTA; KELLIE
VASKO, Secretary of Corrections;
TERESA BITTINGER, Warden; AARON/
HAYNES, Director of Health Services;
VANESSA GEBES, Assistant Director
of Health Services (MDSA); TAMMY NOYLE,
ADA Coordinator (MDSA),

CHANGE OF JUDGE

Defendants.

Based upon the herein filed, "Affidavit for a CHANGE OF JUDGE,"
"Motion for a Change of Judge" and For Good Cause Shown IT IS
HEREBY

ORDERED, that the Plaintiffs Affidavit and Motion for a
Change of Judge is hereby Granted;

IT IS FURTHER ORDERED, that Honorable James Power returns
as presiding Judge and "Re-Hear" All of the Plaintiffs Motions
and other Documents; All this is,

DONE AND ORDERED, in the Second Judicial Circuit, Minnehaha County,
Sioux Falls, SD, on this ____ day of ____, 2025.

Denied: 08/14/2025

/s/ Mammenga, Jennifer

Honorable Presiding Circuit Court Judge

Attest:

By:

(SEAL)

STATE OF SOUTH DAKOTA)
) : ss
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

SHELDON DEAN SCHNEIDER,

49CIV23-2221

Plaintiff,

v.

STATE OF SOUTH DAKOTA; KELLIE
WASKO, Secretary of Corrections;
TERESA BITTINGER, Warden; AARON
HAYNES, Director of Health Services;
VANESSA GEBES, Assistant Director of
Health Services (MDSP); and TAMMY
DOYLE, ADA Coordinator (MDSP),

Defendants.

NOTICE OF ENTRY OF MEMORANDUM
OPINION AND ORDER GRANTING
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT AND DENYING PLAINTIFF'S
MOTION FOR JUDGMENT OF
PLEADINGS

GREETINGS FROM THE STATE OF SOUTH DAKOTA TO THE ABOVE-NAMED
PLAINTIFF, SHELDON DEAN SCHNEIDER, INMATE #47989, MIKE DURFEE
STATE PRISON, 1412 WOOD STREET, SPRINGFIELD, SOUTH DAKOTA
57062-2238:

Please take notice that on the 22nd day of June 2025, the above Court
made and entered its Memorandum Opinion and Order Granting Defendants'
Motion for Summary Judgment and Denying Plaintiff's Motion for Judgment on
the Pleadings filed by the Court on June 23rd, 2025. A true, correct, and
complete copy of the Memorandum Opinion and Order Granting Defendant's
Motion for Summary Judgment and Denying Plaintiff's Motion for Judgment on
the Pleadings is annexed hereto and herewith served upon you and made a
part of this Notice the same as if fully and completely set forth herein.

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

SHELDON DEAN SCHNEIDER,

Plaintiff,

vs.

STATE OF SOUTH DAKOTA;
KELLIE WASKO, Secretary of
Corrections; **TERESA BITTINGER**,
Warden; **AARON HAYNES**, Director
of Health Services; **VANESSA GEBES**,
Assistant Director of Health Services
(MDSP); **TAMMY DOLYE**, ADA
Coordinator (MDSP),

Defendants.

CIV 23-2221

**MEMORANDUM OPINION
AND ORDER
GRANTING DEFENDANTS'
MOTION FOR
SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S MOTION
FOR JUDGMENT ON THE
PLEADINGS**

This case involves an amended "Complaint of Personal Injury and Violations of Civil and ADA Rights" filed by Plaintiff Inmate Sheldon Dean Schneider (Plaintiff).¹ Plaintiff claims that Defendants State of South Dakota, Kellie Wasko, Teresa Bittinger, Aaron Haynes, Vanessa Gebes, and Tammy Doyle, individually and in their official capacities (collectively Defendants), failed to provide adequate medical care and treatment to him, and that Defendants have violated the Americans with Disabilities Act (ADA) as to their conduct towards him. Plaintiff asserts claims of 1) negligence; 2) negligence per se; 3) violation of the ADA; 4) an Eighth Amendment claim under 42 U.S.C. §§ 1983 and 1985; and 5) a claim for "wrongful acts." Plaintiff seeks a monetary award of \$10 million dollars as well as "punitive

¹ Plaintiff filed his original Complaint dated July 20, 2023, with the Second Circuit on August 9, 2023.

damages, presumed damages, hedonic damages, and compensatory damages, as applicable" in an unspecified amount.

This matter came before the Court on April 2, 2025, to address the parties' motions, specifically Plaintiff's Motion for Judgment on the Pleadings, Plaintiff's Motion for Expert Witness, Plaintiff's Motion for Specific Discovery, Plaintiff's Motion to Strike, Plaintiff's Motion for Appointment of Counsel, and Defendants' Motion for Summary Judgment. Plaintiff appeared pro se via Zoom. Defendants were represented at the hearing by Assistant Attorney General Ryan McFall. Plaintiff's Motion for Expert Witness, Plaintiff's Motion for Specific Discovery, Plaintiff's Motion to Strike, and Plaintiff's Motion for Appointed Counsel were orally denied at the conclusion of the hearing. The Court took Plaintiff's Motion for Judgment on the Pleadings and Defendants' Motion for Summary Judgment under advisement. After considering the parties' briefs, oral arguments, and applicable authorities, the Court grants Defendants' Motion for Summary Judgment and denies Plaintiff's Motion for Judgment on the Pleadings.

FACTUAL BACKGROUND

Plaintiff arrived as an inmate at the South Dakota State Penitentiary on May 22, 2023. He asserts that he arrived at the penitentiary with what he alleges was a "30% break in the right hand/middle finger" and "relayed to the nurse/med-tech his medications of 10 mg Oxycodone, 3 times a day, 900 mg Gabapentin, 3 times a day, and 20 mg IR Methylphenidate, 3 times a day."² Plaintiff claims he notified health

² Plaintiff's initial injury occurred prior to his incarceration. According to Plaintiff's Brief in Opposition to Summary Judgment, he injured his right hand/middle finger on March 4, 2023, more than two months prior to his arrival at the penitentiary.

services staff of the "need to continue said medications and/or need for titration and the oncoming of serious withdrawals, which Plaintiff would need to be monitored for serious side effects." Plaintiff contends he "was denied adequate reasonable and necessary access to medicine to prevent withdrawals and serious pain from his medical conditions." He claims it took 16 days for him to talk to a health care provider about his health concerns. Plaintiff asserts that this resulted in "serious withdrawals" that caused multiple seizures and severely re-injuring or worsening of the break in his right hand/middle finger. He alleges this caused him "excruciating pain in the Plaintiffs [sic] nerves, neck, left shoulder, and right hand/middle finger." He claims that Defendants did not follow medical orders and did not administer withdrawal medications. Plaintiff claims to have suffered "obvious signs of a [sic] injury and serious withdrawal that even a lay person could tell the plaintiff was suffering and not ok." He asserts that subsequent x-rays showed that his alleged fracture was worsened to 70% and that when he was seen at Avera Orthopedics, he was told he had taken too long to have appropriate surgery. He claims he lost the opportunity to have his hand fixed surgically. He further claims Defendants failed to provide adequate medical care to Plaintiff causing a denial of equal protection. Plaintiff also alleges that he has a disability and Defendants have failed to provide reasonable accommodations under the ADA. He brings a claim under 42 U.S.C. §§ 1983 and 1985 alleging that the Defendants were deliberately indifferent in their lack of medical care and services.

Defendants move for summary judgment alleging that there are no disputed material facts, and they are entitled to judgment as a matter of law.

ANALYSIS AND DECISION

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." SDCL § 15-6-56(c). "A disputed fact is not 'material' unless it would affect the outcome of the suit under the governing substantive law in that 'a reasonable jury could return a verdict for the nonmoving party.'" *Gul v. Center for Family Medicine*, 2009 SD 12, ¶ 8, 762 N.W.2d 629, 633 (citations omitted). "[T]he moving party has the burden of clearly demonstrating an absence of any genuine issue of material fact and an entitlement to judgment as a matter of law." *Johnson v. Matthew J. Batchelder Co., Inc.*, 2010 SD 23, ¶ 8, 779 N.W.2d 690, 693 (citations omitted). A court determining a summary judgment motion must view the facts, and all reasonable inferences drawn from the facts, most favorably to the nonmoving party. *North Star Mutual Ins. Co. v. Rasmussen*, 2007 SD 55, ¶ 14, 734 N.W.2d 352, 356.

Once the moving party has established its burden, the nonmoving party must "present specific facts showing that a genuine, material issue for trial exists" to evade the grant of summary judgment. *Johnson v. Hayman & Associates, Inc.*, 2015 S.D. 63, ¶ 11, 867 N.W.2d 698, 701 (internal citations and quotations omitted). These specific facts must be more than "mere speculation, conjecture, or fantasy." *Stern Oil Co., Inc. v. Brown*, 2012 S.D. 56, ¶ 8, 817 N.W.2d 395, 398. "Unsupported conclusions and speculative statements do not raise a genuine issue of fact." *Dakota Indus., Inc. v. Cabela's.Com, Inc.*, 2009 SD 39, ¶ 20, 766 N.W.2d 510, 516.

I. Plaintiff's State Law Tort Claims – Count 1, 2, and 5

Plaintiff asserts a claim for medical malpractice/negligence in Count 1; Count 2 asserts a claim of negligence per se; and Count 3 alleges generally "Wrongful Acts." Plaintiff failed to comply with SDCL 3-21-2 prior to bringing these state law tort claims, and therefore the claims are barred as a matter of law.

SDCL 3-21-2 provides:

No action for the recovery of damages for personal injury, property damage, error, or omission or death caused by a public entity or its employees may be maintained against the public entity or its employees unless written notice of the time, place, and cause of the injury is given to the public entity as provided by this chapter within one hundred eighty days after the injury. Nothing in this chapter tolls or extends any applicable limitation on the time for commencing an action.

The South Dakota Supreme Court has held that SDCL 3-21-2 requires notice for all tort causes of action against public entities and public officials. *Yankton County v. McAllister*, 2022 S.D. 37, ¶ 16, 977 N.W.2d 327, 334. Plaintiff's tort claims in Counts 1, 2, and 5 are against the State of South Dakota and its employees. Therefore, Plaintiff was required to comply with SDCL 3-21-2 prior to filing suit.

SDCL 3-21-3 provides, in relevant part, that: "Notice shall be given to the following officers as applicable: (1) In the case of the State of South Dakota, to the attorney general and the commissioner of human resources and administration[.]" Defendants have submitted affidavits from the Director of the Office of Risk Management and a member of the Attorney General's Office charged with docketing and tracking all incoming mail for the office asserting that a search of their records found no Notice from Plaintiff prior to filing this lawsuit.

Plaintiff asserts that he substantially complied with the requirements of SDCL 3-21-2 and SDCL 3-21-3 by mailing copies of his Complaint to the Governor, Commissioner of Administration, State Auditor, and Attorney General's Office on September 5, 2023, which he claims was more than 90 days before he eventually successfully accomplished personal service upon the Defendants. However, this Court cannot view Plaintiff's mailing of the Complaint as substantial compliance with the Notice requirements of SDCL 3-21-2 because Plaintiff's own court filings show it was an attempt at service of the Complaint to commence the litigation. A review of the court file shows that Plaintiff's original Complaint was dated July 20, 2023. Plaintiff submitted his Complaint to the circuit court and sought waiver of the filing and service fees. The Court waived the filing fee with the Complaint being filed on August 9, 2023 but did not waive the service fee. Plaintiff then filed a copy of the Notice and Admission of Summons/Summons and Complaint that he sent to Governor, Commissioner of Administration, State Auditor, and Attorney General on September 6, 2023. Plaintiff also sent a letter to the clerk's office on November 6, 2023, stating that "opposing parties have failed to responde [sic] to serves [sic] pursuant to 15-6-4(j) sent on September 6th, 2023. Therefore, making them responsible for payment of service fees." The letter further stated, "Or respectfully move the Court for summary judgment for failure to responde [sic]."

The South Dakota Supreme Court has held that statutory notice under SDCL 3-21-2 is mandatory to *commence* a lawsuit. *Yankton Cnty. v. McAllister*, 2022 S.D. 37, ¶ 16, 977 N.W.2d 327, 335 (citing *Finck v. City of Tea*, 443 N.W.2d 632, 635 (S.D. 1989); see also *Wolff v. Sec'y of S.D. Game, Fish & Parks Dep't.*, 1996 S.D. 23, ¶ 21,

544 N.W.2d 531, 535). The Supreme Court has found that substantial compliance can satisfy the notice requirement, stating:

"Substantial compliance" with a statute means actual compliance in respect to the substance essential to every reasonable objective of the statute. It means that a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which it was adopted. Substantial compliance with a statute is not shown unless it is made to appear that the purpose of the statute is shown to have been served. What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case.

Yankton Cnty., 2022 S.D. 37, ¶ 18, 977 N.W.2d at 335 (citing *Myers v. Charles Mix Cnty.*, 1997 S.D. 89, ¶ 13, 566 N.W.2d 470, 474 (quoting *Larson v. Hazeltine*, 1996 S.D. 100, ¶ 19, 552 N.W.2d 830, 835)). "It is ultimately a legal question for the Court as to whether the facts of a case constitute substantial compliance." *Yankton Cnty.*, 2022 S.D. 37, ¶ 18, 977 N.W.2d at 335. The purpose of the notice statute should be considered when determining whether a particular notice substantially complied with SDCL 3-21-2. The purposes include: "(1) To investigate evidence while fresh; (2) to prepare a defense in case litigation appears necessary; (3) to evaluate claims, allowing early settlement of meritorious ones; (4) to protect against unreasonable or nuisance claims; (5) to facilitate prompt repairs, avoiding further injuries; (6) to allow the [public entity] to budget for payment of claims; and (7) to insure that officials responsible for the above tasks are aware of their duty to act." *Yankton Cnty.*, 2022 S.D. 37, ¶ 19, 977 N.W.2d at 335-36 (quoting *Anderson v. Keller*, 2007 S.D. 89, ¶ 13, 739 N.W.2d 35, 40).

Plaintiff's act of mailing copies of his Complaint with an Admission of Service was not substantial compliance with SDCL 3-21-2 and does not satisfy the purposes of the mandatory notice before the commencement of litigation. Defendants were

given no opportunity to investigate or evaluate the claim prior to commencement of litigation. Plaintiff filed his Complaint with the circuit court and attempted to have Defendants admit service. Plaintiff cannot rely on those actions as substantial compliance with the notice required *before commencing litigation*. Those acts were in fact the commencement of litigation. Plaintiff's reliance on the *Yankton County* case is misplaced. That case is distinguishable because it involved the assertion of a counterclaim in litigation that was started against a defendant by the governmental entity and the counterclaim of barratry was directly related to the commencement of the litigation by the governmental entity. *Yankton Cnty*, 2022 S.D. 37, ¶ 23, 977 N.W.2d at 336 ("Because Luke and MTD's barratry counterclaim arises from the complaint filed by Yankton County for the alleged Ordinance violation, any risk of surprise to Yankton County was minimal. Additionally, 'there is ... no reason to require separate written notice of such a claim in advance of the filing of a counterclaim because the expense of litigation has already been substantially incurred' once Yankton County initiated the lawsuit.").

Plaintiff did not substantially comply with SDCL 3-21-2, and his tort claims are barred. Therefore, Defendants are entitled to Summary Judgment on Counts 1, 2, and 5 as a matter of law.

II. Eighth Amendment/Deliberate Indifference Claim – Count 4

In Count 4, Plaintiff asserts a claim under 42 U.S.C. §§ 1983 and 1985. His Complaint states that Defendants' actions deprived him of rights, privileges, and immunities provided by the Eighth and Fourteenth Amendments to the United States Constitution and Article VI, §§ 1 and 20 of the South Dakota Constitution. Specifically, Plaintiff asserts that Defendants' actions or inactions concerning his

medical care violated the Eighth Amendment's prohibition against cruel and unusual punishment and therefore, deprived Plaintiff of his "rights, privileges and immunities secured" under the Eighth and Fourteenth Amendments.

The Eighth Amendment states "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.; *see also* S.D. Const. Art. VI, § 23 ("Excessive bail shall not be required, excessive fines imposed, nor cruel punishments inflicted."). "The Eighth Amendment requires state prison officials to provide inmates with needed medical care." *Dantzler v. Baldwin*, 133 F.4th 833, 843 (8th Cir. 2025) (quoting *Cullor v. Baldwin*, 830 F.3d 830, 836 (8th Cir. 2016)). The United States Supreme Court has held that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain'" and therefore, the "deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983." *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 251 (1976). "This conclusion does not mean, however, that every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment." *Id.* at 105, 97 S. Ct. at 291. "In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend 'evolving standards of decency' in violation of the Eighth Amendment." *Id.*

To prevail on an Eighth Amendment claim, "a prima facie case alleging such deliberate indifference requires the inmate-plaintiff to demonstrate that he suffered from an objectively serious medical need and that prison officials actually knew of, but deliberately disregarded, that need." *Meuir v. Greene County Jail Employees*, 487

F.3d 1115, 1118 (8th Cir. 2007) (quoting *Dulany v. Carnahan*, 132 F.3d 1234, 1239 (8th Cir. 1997)). "An objectively serious medical need is one that either has been diagnosed by a physician as requiring treatment, or is so obvious that even a 'layperson would easily recognize the necessity for a doctor's attention.'" *Jones v. Minnesota Dep't of Corr.*, 512 F.3d 478, 481 (8th Cir. 2008). "The plaintiff-inmate must clear a substantial evidentiary threshold to show that the prison's medical staff deliberately disregarded the inmate's needs by administering an inadequate treatment." *Meuir*, 487 F.3d at 1118. "[M]edical malpractice claims do not necessarily constitute Eighth Amendment violations." *Hines v. Anderson*, 547 F.3d 915, 920 (8th Cir. 2008) (citing *Dulany*, 132 F.3d at 1243).

[I]nmates have no constitutional right to receive a particular or requested course of treatment, and prison doctors remain free to exercise their independent medical judgment. Deliberate indifference may be demonstrated by prison guards who intentionally deny or delay access to medical care or intentionally interfere with prescribed treatment, or by prison doctors who fail to respond to prisoner's serious medical needs. Mere negligence or medical malpractice, however, are insufficient to rise to a constitutional violation.

Dulany, 132 F.3d at 1239 (internal citations omitted). "When evaluating whether an actor deliberately disregarded a risk, we consider 'his actions in light of the information he possessed at the time, the practical limitations of his position and alternative courses of action that would have been apparent to an official in that position.'" *Letterman v. Does*, 789 F.3d 856, 862 (8th Cir. 2015).

Plaintiff's claim that he was experiencing "obvious signs of a[n] injury and serious withdrawal that even a lay person could tell" while in Defendants' care is not supported by anything other than Plaintiff's bare assertion. Plaintiff was injured months prior to coming into custody. He sought medical treatment for the injury to his finger and surgery was performed on March 9, 2023. Defendants' Exhibit 2. It

was recommended that Plaintiff be admitted after surgery for IV antibiotics to prevent infection, but Plaintiff refused to stay. He "became severely upset, belligerent, demanding for more pain medications[.]" Defendants' Exhibit 2. His medical records show that he was non-compliant with his follow-up care prior to his incarceration and sought narcotic pain medication from different medical providers. Defendants' Exhibits 2 and 3. Plaintiff was seen on March 29, 2023, by Dr. Meaney, his primary care physician, whose notes indicate that the treatment plan was to "wean the patient off his narcotics as previously discussed." Defendants' Exhibit 4.

Plaintiff admits to having an "extremely" serious substance abuse problem. Defendants' Exhibit 6. When Plaintiff arrived at the state penitentiary on May 22, 2023, he was medically screened. He reported that his last doses of Gabapentin, Methylphenidate, and Oxycodone were May 20, 2023. Defendants' Exhibit 5. During the screening, Plaintiff was not found to need immediate medical attention. Defendant's Exhibit 5. During his Substance Use Appraisal on May 24, 2023, Plaintiff reported that he was "experiencing emotional dysregulation, cold sweating, being uncomfortable all the time, temperature dysregulation (cold in hot settings) and panicky." Defendants' Exhibit 6. Plaintiff also reported "increased anxiety and depression due to his recent violation" and that he believed he "shouldn't be in prison." Defendants' Exhibit 6. Plaintiff does not dispute those statements and admits that he used his hand injury as an excuse to use street drugs; he also admits that he consumed opiate substances in larger amounts and for longer periods of time than prescribed. Plaintiff's Response to Defendants' Statement of Undisputed Material Facts, #46, #48, and #49.

In the immediate days following Plaintiff's arrival at the penitentiary, he submitted several Kite-Request Slips during the period of May 26 to June 2, 2023. While Plaintiff made various requests, including a follow-up x-ray of his hand, STD testing, "double trays" from the kitchen, teeth cleaning based on dental pain, and prior "self-meds" such as prenatal vitamins, fish oil, and Tylenol, Plaintiff did not mention in any of those requests any alleged withdrawal symptoms. Defendants' Exhibits 7 through 11. Plaintiff was seen by Health Services on June 3, 2023. At that time, he reported that he had been prescribed Gabapentin, Oxycodone, and Methylphenidate prior to his incarceration. It was only after Plaintiff was seen by Health Services that he filed a Kite-Request Slip on June 3, 2023, claiming to be "suffering terribly from withdrawals[.]" Defendants' Exhibit 13. Plaintiff submitted a Kite-Request slip on June 5, 2023, and he reiterated that he had been cut off "cold turkey" from his prescribed medications since entering Defendants' care and that he was suffering withdrawal symptoms. Defendants' Exhibit 14. However, Plaintiff's medical records do not support his claims that he was suffering serious withdrawal symptoms and Defendants were deliberately indifferent to his serious medical condition. Plaintiff admits that his last doses of Gabapentin, Oxycodone, and Methylphenidate occurred on May 20, 2023, two days prior to his incarceration. Despite the numerous Kites filed by Plaintiff, no mention of withdrawal symptoms was made until after he was seen at Health Services on June 3rd, approximately 14 days after his last dose of those medications.

On June 6, 2023, Dr. Mark Rector saw Plaintiff. Despite Plaintiff's claim that he was exhibiting withdrawal symptoms when he was seen by Dr. Rector, Dr. Rector's note stated "NAD [No Acute Distress] other than sweating during office visit."

Defendants' Exhibit 17. Dr. Rector referred Plaintiff for physical therapy for a chronic left shoulder pain and right-hand surgery. Defendants' Exhibit 18. Dr. Rector also submitted a Non-Formulary Drug Request on June 6, 2023 for Gabapentin to be given to Plaintiff in tapering doses over a period of 21 days. Defendants' Exhibit 19. The request was initially approved by Defendant Dr. Haynes. However, upon further discussion between medical providers, it was determined that given the fact that the last known dose of Gabapentin was on May 20, 2023, there was no medical indication for tapering. Defendants' Exhibit 21. The record reflects that it was explained to Plaintiff that Gabapentin has a half-life of approximately eight hours in adults, and that research has shown withdrawal symptoms can last from 12 hours up to seven days, with a maximum of 10 days. Defendants' Exhibit 21. As of June 7, 2023, it had been 18 days since Plaintiff's last dose of Gabapentin. According to the records, Clinical Opiate Withdrawal Scale (COWS) assessments and continued vitals over the next several days were ordered. Defendants' Exhibit 21.

On June 8, 2023, a COWS assessment was conducted on Plaintiff. Plaintiff scored a total score of 4 and that score corresponds to less than "mild" withdrawal symptoms.³ Defendants' Exhibit 23. When his COWS assessment score was discussed with him, Plaintiff became argumentative and asked, "how does a person score?" and "I wanna score." Defendants' Exhibit 23. A second COWS assessment was conducted on Plaintiff on the evening of June 8, 2023, and Plaintiff's total score for that assessment was 0. Defendants' Exhibit 24. A COWS assessment conducted

³ A score range of 5-12 indicates mild withdrawal symptoms; a score range of 13-24 indicates moderate withdrawal symptoms; and a score range of 25-36 indicates moderately severe withdrawal.

on June 9, 2023 resulted in a score of 5 (mild withdrawal) based on a score of 2 for aching of bones or joints, 2 for anxiety or irritability, and 1 for reports of chills or flushing. Defendant's Exhibit 25. Nothing in the medical records suggest that Plaintiff was having multiple seizures or undergoing serious withdrawal symptoms as claimed by Plaintiff and Plaintiff provides nothing in support of his claims other than his bare assertions.

Plaintiff's medical records do not support Plaintiff's claim that Defendants were "deliberately indifferent" to Plaintiff's serious medical needs in violation of the Eighth Amendment. "Mere allegations, unsupported by specific facts or evidence beyond the nonmoving party's own conclusions, are insufficient to withstand a motion for summary judgment." *Thomas v. Corwin*, 483 F.3d 516, 527 (8th Cir. 2007). Plaintiff's requests for tapering were denied because there was no medical need to do so. The question of whether to prescribe certain medical treatment is within the prison medical staff's discretion. Plaintiff's Eighth Amendment rights were not violated when Defendants did not administer Plaintiff's preferred medication at his demand. Plaintiff's medical records show that he was provided ongoing medical treatment for his finger and other complaints, such as x-rays, physical therapy, referrals to specialists, and providing of other pain medications. Plaintiff was offered other medications for his anxiety and pain, but Plaintiff did not want to take them and continued to insist on being prescribed Gabapentin. Defendants' Exhibit 68; Plaintiff's Response to Defendants' Statement of Undisputed Material Facts, #177. "[N]othing in the Eighth Amendment prevents prison doctors from exercising their independent medical judgment. Prisoners do not have a constitutional right to any particular type of treatment. Prison officials do not violate the Eighth Amendment

when, in the exercise of their professional judgment, they refuse to implement a prisoner's requested course of treatment." *Long v. Nix*, 86 F.3d 761, 765 (8th Cir. 1996) (citing *White v. Farrier*, 849 F.2d 322, 327 (8th Cir.1988); *Kayser v. Caspari*, 16 F.3d 280, 281 (8th Cir.1994); *Taylor v. Turner*, 884 F.2d 1088, 1090 (8th Cir.1989)). "[M]ere disagreement with treatment decisions does not rise to the level of a constitutional violation." *Langford v. Norris*, 614 F.3d 445, 460 (8th Cir. 2010) (quoting *Alberson v. Norris*, 458 F.3d 762, 765 (8th Cir.2006) (quoting *Estate of Rosenberg v. Crandell*, 56 F.3d 35, 37 (8th Cir.1995))). Plaintiff's mere allegations unsupported by the record or specific facts do not create a genuine issue of material fact. Based on the above analysis, Defendants are entitled to summary judgment on Plaintiff's claims under Count 4, and this Court does not need to reach Defendants' arguments on qualified immunity.

III. Violation of Americans With Disabilities Act – Count 3

Plaintiff asserts in his Amended Complaint that he is a disabled individual and that the Defendants' actions toward him violated the Americans With Disabilities Act (ADA). Plaintiff claims that his "disabilities are a permanently disabled right hand/middle finger which the plaintiff endures daily excruciating pain from, neurological neuritis, extreme anxiety, panic disorder, hypervigilance, PTSD, manic, ADHD and mild narcoleptic tendencies." Plaintiff's Amended Complaint, ¶18. He claims he was denied reasonable accommodations for his alleged disabilities and seeks monetary damages. Plaintiff does not state any injunctive relief sought in his Amended Complaint.

Plaintiff submitted an Inmate Request for Reasonable Accommodation on July 1, 2023, stating that he had "nerve pain/damage left side neck to left shoulder and

arm to hand down left leg to floor." Defendants' Exhibit 75. He further reported "continuance pain, burning, pinching, numbness left side. Severe anxiety & panic." *Id.* Plaintiff's requested accommodation was "900 mg 3X a day Gabapentin." *Id.* Plaintiff was directed to contact health services for medication requests and was notified that the ADA office could not prescribe medications. On March 11, 2024, Plaintiff submitted a Kite-Request Slip asking the ADA Coordinator for "ADA headphones & Hearing Aids," "ADA shoes," and "ADA Medication Override." Defendants' Exhibit 76. Plaintiff again sought Gabapentin as an ADA accommodation. *Id.* Plaintiff was notified that medical staff had no record of a hearing impairment, so he was directed to work with them for a hearing evaluation. Defendants' Exhibit 77. He was directed to work with medical staff to determine the need for medical shoes and/or orthotics. *Id.* Plaintiff was notified that the ADA Coordinator could not override medication orders or prescribe medications so he would need to work with medical staff regarding treatment options. *Id.* Plaintiff filed an Inmate Request for Reasonable Accommodations on March 15, 2024, again requesting 900 mg of Gabapentin three times a day as an accommodation for "both physical & mental health well-being – dual diagnosis." Defendants' Exhibit 79. Plaintiff was directed to address medications with health services. *Id.* On April 2, 2024, Plaintiff submitted an Inmate Request for Reasonable Accommodation, stating that "I am a hearing impaired person. I also suffer neurological neuritis, anxiety, hypervigilance, PTSD, panic attacks, narcoleptic tendencies, ADHD, mood disorders." Defendants' Exhibit 80. Plaintiff claimed he was "unable to perform any major life activities as an abled bodied person can without the accommodations of medications and hearing aids, headphones, watch, and shoes." *Id.* Plaintiff's

requested accommodations were "900 mg 3X a day Gabapentin, 20 mg IR Methylphenidate 3X a day, ADA headphones, ADA watch, ADA medical shoes and hearing aids." Plaintiff was notified that medical staff was awaiting the results of his audiogram performed on April 1, 2024, to determine whether to issue hearing aids. Defendants' Exhibit 81. He was informed that prescriptions for medications must come from a medical provider, not as an ADA accommodation. *Id.* He was also notified that there was no current diagnosis documented to qualify Plaintiff for alternative footwear. *Id.* He was encouraged to pursue that issue with medical staff. *Id.* Plaintiff submitted an Inmate Request for Reasonable Accommodation on May 2, 2024, requesting ADA headphones and watch. Defendants' Exhibit 82. He was notified that they were awaiting his examination by an audiologist and that he should resubmit the request if he was approved for hearing aids. Defendants' Exhibit 83. Plaintiff was examined by an otolaryngologist on August 5, 2024. Defendants' Exhibit 90. The doctor's report indicated "mild sensorineural hearing loss, bilateral." *Id.* "Slightly worse for left ear than right." *Id.* Plaintiff had 100% word recognition in his right ear and 86% word recognition in his left ear. *Id.* The recommendation was for audiology evaluation in 24 months to monitor hearing loss. *Id.* The report did not recommend hearing aids.

Plaintiff's Amended Complaint states: "As a direct result the South Dakota Penitentiary is in a sense a care taker [sic] and *employer* of the Plaintiff. 1) The S.D.S.P. knows of the Plaintiffs [sic] disabilities. 2) Plaintiff has requested reasonable accommodations and/or assistance. 3) The S.D.S.P. did not in good faith assist me in seeking or prescribing accommodations and 4) I could have been reasonably accommodated but for the S.D.S.P. lack of good faith. Plaintiff was 'NOT'." Plaintiff's

Amended Complaint, ¶ 20 (emphasis added). "The ADA 'forbids discrimination against persons with disabilities in three major areas of public life: employment, which is covered by Title I of the statute; public services, programs, and activities, which are the subject of Title II; and public accommodations, which are covered by Title III.'" *In re Henry*, 2013 S.D. 93, ¶ 19, 841 N.W.2d 471, 476 (quoting *Tennessee v. Lane*, 541 U.S. 509, 516-17, 124 S.Ct. 1978, 1984, 158 L.Ed.2d 820 (2004)). To the extent Plaintiff attempts to assert a claim under Title I of the ADA, Plaintiff was not Defendants' employee and summary judgment would be granted as to any Title I claim. *Keene v. Busy Bee Cafe*, No. C06-1008-EJM, 2006 WL 1004975, at *3 (N.D. Iowa Apr. 17, 2006) ("Title I of the ADA does not apply because the plaintiff is an inmate of the Iowa State Penitentiary, not an employee or job applicant."); *see also Battle v. Minnesota Dep't of Corr.*, 40 F. App'x 308 (8th Cir. 2002).

Further, Plaintiff cannot sue Defendants in their individual capacities for alleged violations of the ADA. "The Eighth Circuit has held that individuals may not be sued in their individual capacities directly under the provisions of Title II of the ADA." *Alsbrook v. City of Maumelle*, 184 F.3d 999, 1005 n. 8 (8th Cir.1999). *See also Randolph v. Rodgers*, 253 F.3d 342, 346 (8th Cir. 2001). Therefore, Defendants are entitled to summary judgment as to ADA claims made against them individually. Defendants are also entitled to summary judgment on Plaintiff's ADA claim to the extent that he seeks monetary damages.

[T]he United States Supreme Court has held that a suit against an employee acting in his official capacity is tantamount to a lawsuit against the state. *Kentucky v. Graham*, 473 U.S. 159, 165-66, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985). As such, a suit against the individual prison officials in their official capacities is the same as a suit against the Department of Corrections and the State of North Dakota. However, "*Ex parte Young* permits a private party to receive prospective injunctive relief in federal court against a state official,

even if the Eleventh Amendment otherwise protects the state and its officials from being sued in federal court.” *Bradley v. Arkansas Dep’t of Educ.*, 189 F.3d 745 (8th Cir.1999) (citing *Ex parte Young*, 209 U.S. 123, 155-56, 159, 166-68, 28 S.Ct. 441, 52 L.Ed. 714 (1908)). In other words, “state officials may be sued in their official capacities for prospective injunctive relief when the plaintiff alleges that the officials are acting in violation of the Constitution or federal law.” *Missouri Child Care Ass’n v. Cross*, 294 F.3d 1034, 1037 (8th Cir.2002).

Damron v. N. Dakota Com’r. of Corr., 299 F. Supp. 2d 970, 975-76 (D.N.D. 2004), *aff’d* sub nom. *Damron v. N. Dakota Com’r of Corr.*, Bismarck, N.D., 127 F. App’x 909 (8th Cir. 2005). The caselaw is clear that the Eleventh Amendment bars suits by individuals against a state or state officials acting in their official capacities for money damages under the ADA. *Id.*; see also *Board of Trustees of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 360, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001); *Alsbrook v. City of Maumelle*, 184 F.3d 999, 1010 (8th Cir.1999). Plaintiff can sue state officials under the ADA for prospective, injunctive relief only. *Grey v. Wilburn*, 270 F.3d 607, 609 (8th Cir. 2001); see also *Gibson v. Arkansas Dep’t of Correction*, 265 F.3d 718 (8th Cir.2001). Therefore, Plaintiff’s ADA claim to the extent that it seeks monetary damages is barred.

Plaintiff’s only remaining claim under the ADA would be a possible claim for prospective injunctive relief. However, Plaintiff did not state a claim for injunctive relief in his Amended Complaint. Even assuming that such a claim was asserted, Plaintiff has not demonstrated that he is a qualified individual with a disability. When considering a motion for summary judgment, this Court must “view all reasonable inferences drawn from the facts in the light most favorable to the non-moving party.” *Nationwide Mut. Ins. Co. v. Barton Solvents Inc.*, 2014 S.D. 70, ¶ 10, 855 N.W.2d 145, 149 (other citations omitted).

"The nonmoving party, however, must present specific facts showing that a genuine, material issue for trial exists." *Hass v. Wentzlaff*, 2012 S.D. 50, ¶ 11, 816 N.W.2d 96, 101 (quoting *Saathoff v. Kuhlman*, 2009 S.D. 17, ¶ 11, 763 N.W.2d 800, 804). "Entry of summary judgment is mandated against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Id.* (quoting *W. Consol. Coop. v. Pew*, 2011 S.D. 9, ¶ 19, 795 N.W.2d 390, 396). A sufficient showing requires that "[t]he party challenging summary judgment . . . substantiate his allegations with sufficient probative evidence that would permit a finding in his favor on more than mere speculation, conjecture, or fantasy." *Quinn v. Farmers Ins. Exch.*, 2014 S.D. 14, ¶ 20, 844 N.W.2d 619, 624-25 (quoting *Stern Oil Co. v. Brown*, 2012 S.D. 56, ¶ 8, 817 N.W.2d 395, 398).

Nationwide Mut. Ins. Co., 2014 S.D. 70, ¶ 10, 855 N.W.2d at 149. To establish a violation of Title II of the ADA, Plaintiff must demonstrate: "1) he is a qualified individual with a disability; 2) he was excluded from participation in or denied the benefits of a public entity's services, programs, or activities, or was otherwise discriminated against by the entity; and 3) that such exclusion, denial of benefits, or other discrimination, was by reason of his disability." *Layton v. Elder*, 143 F.3d 469, 472 (8th Cir. 1998).

Plaintiff has not made a prima facie case that he is a qualified individual with a disability within the meaning of the ADA. Plaintiff's bare assertion that he is "disabled" is not sufficient to establish a claim under the ADA. "A person is disabled within the meaning of the ADA if he demonstrates that he has a physical or mental impairment that substantially limits one or more of his major life activities, that he has a record of such an impairment, or that he is regarded as having such an impairment." *Amir v. St. Louis Univ.*, 184 F.3d 1017, 1027 (8th Cir. 1999). "Major life activities do not include those activities that, although important to the individual plaintiff, are not significant within the meaning of the ADA. Major life activities do include functions such as 'caring for one's self, performing manual tasks, walking,

seeing, hearing, speaking, breathing, learning, and working.” *Id.* (quoting 28 C.F.R. § 36.104). While Plaintiff has presented evidence of a physical injury to his finger, he has not presented sufficient evidence that he is a disabled individual as required by the ADA. *See Sanchez v. Am. Popcorn Co.*, 450 F. Supp. 2d 985, 998 (N.D. Iowa 2006) (“Merely having an impairment does not make one disabled for purposes of the ADA.”); *Gard v. Dooley*, No. 4:14-CV-04023-LLP, 2017 WL 782279, at *4 (D.S.D. Feb. 28, 2017) (individual with diabetes is not per se disabled, rather an individual with diabetes has a physical or mental impairment but would still need to show that impairment substantially limits a major life activity). As to Plaintiff’s other requested ADA accommodations for headphones, a watch, and special shoes, he has not presented sufficient evidence of a disability to survive Defendants’ Motion for Summary Judgment. Plaintiff was examined by an otolaryngologist who found only “mild sensorineural hearing loss, bilateral.” The recommendation was for audiology evaluation in 24 months to monitor hearing loss. Further, Plaintiff improperly seeks to challenge the medical determination as to the prescription of specific medications as a denied “accommodation” under the ADA. *See Burger v. Bloomberg*, 418 F.3d 882, 883 (8th Cir. 2005) (holding that a lawsuit under the Americans with Disabilities Act (ADA) cannot be based on medical treatment decisions). Plaintiff’s self-proclaimed disability has not been substantiated with sufficient probative evidence that would permit a finding in his favor as to any alleged ADA violation.

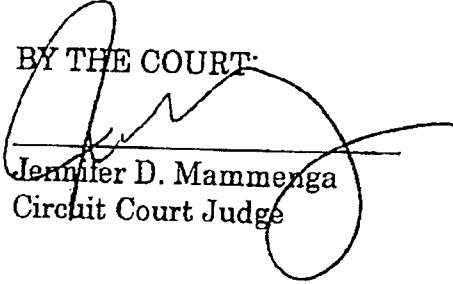
Based on the above analysis, Defendants are entitled to summary judgment as to Plaintiff’s ADA claims in Count 3 of his complaint.

ORDER

Based upon the foregoing, it is hereby ordered that Defendants' Motion for Summary Judgment is GRANTED and Plaintiff's Motion for Judgment on the Pleadings is DENIED.

Dated at Sioux Falls, South Dakota this 22nd day of June, 2025.

BY THE COURT:


Jennifer D. Mammenga
Circuit Court Judge

Attest:
Patzner, Sarah
Clerk/Deputy



IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31226

SHELDON DEAN SCHNEIDER,

Plaintiff and Appellant,

v.

STATE OF SOUTH DAKOTA;
KELLIE WASKO, Secretary of
Corrections; TERESA BITTINGER,
Warden; AARON HAYNES, Director
of Health Services; VANESSA
GEBES; Assistant Director of Health
Services; TAMMY DOYLE, ADA
Coordinator (MDSP),

Defendants and Appellees.

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE JENNIFER MAMMENGGA
Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal filed September 25, 2025

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31226

SHELDON DEAN SCHNEIDER,

Plaintiff and Appellant,

v.

STATE OF SOUTH DAKOTA;
KELLIE WASKO, Secretary of
Corrections; TERESA BITTINGER,
Warden; AARON HAYNES, Director
of Health Services; VANESSA
GEBES; Assistant Director of Health
Services; TAMMY DOYLE, ADA
Coordinator (MDSP),

Defendants and Appellees.

PRELIMINARY STATEMENT

In this brief, Plaintiff and Appellant, Sheldon Schneider, will be referred to as “Schneider.” Defendants and Appellees will be referred to collectively as “DOC Defendants.”¹ References to the record and other documents will be as follows:

Minnehaha County File, Civ. 23-2221.....SR 2221

Appellant’s BriefApp. B.

1. The abbreviation “DOC” stands for the South Dakota Department of Corrections and encompasses, for the purposes of this appeal, the State of South Dakota and all correctional employees named as defendants in this matter.

All references to the record and other documents will be followed by their appropriate page number(s).

JURISDICTIONAL STATEMENT

Schneider filed an untimely notice of appeal from the trial court's Memorandum Opinion and Order Granting Defendant's Motion for Summary Judgment and Denying Plaintiff's Motion for Judgment on the Pleadings, which this Court dismissed on September 3, 2025. SR 2221 – 1019, 1082. Schneider filed a second notice of appeal from the trial court's post-judgment orders denying his motions to reconsider, for change of judge, objections to notice of entry of order, and withdrawal of judgment on the pleadings. SR 2221 - 1077. This Court lacks statutory authority to assert jurisdiction over the post-judgment orders under SDCL 15-26A-3.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I.

THE COURT LACKS APPELLATE JURISDICTION TO REVIEW THE TRIAL COURT'S ORDERS FROM WHICH THE APPEAL HAS BEEN TAKEN.

The trial court made no finding in this regard.

SDCL 15-26A-3

People ex rel. S.M.D.N., 2004 S.D. 5, 674 N.W.2d 516

Legendary Loan Link, Inc. v. Larson, 2017 S.D. 25, 896 N.W.2d 267

Wilge v. Cropp, 74 S.D. 511, 54 N.W.2d 568 (1952)

II.

BASED ON THE PROCEDURAL POSTURE OF THIS APPEAL, THE COURT IS UNABLE TO REACH THE MERITS OF BOTH THE TRIAL COURT'S SUMMARY JUDGMENT ORDER AND THE POST-JUDGMENT ORDERS DENYING RELIEF.

The trial court made no finding in this regard.

State v. Waters, 472 N.W.2d 524, 525 (S.D. 1991)

Duerre v. Hepler, 2017 S.D. 8, 892 N.W.2d 209

STATEMENT OF THE CASE AND FACTS

Schneider filed an amended complaint against DOC Defendants alleging state-law negligence claims for failing to treat a broken finger, failing to administer certain pain medications, and causing re-injury to his finger. SR 2221 – 98-107. He further asserted federal claims for deliberate indifference and violations of the Americans with Disabilities Act (ADA) based upon the same set of facts. *Id.* Schneider sought \$10,000,000.00 in compensatory damages, in addition to punitive damages, and other various damages, costs, and fees. SR 2221 – 108.

DOC Defendants denied the allegations in the amended complaint and ultimately prevailed on a motion for summary judgment. SR 2221 – 161-165; 923-924. As to Schneider's negligence claims, the trial court concluded they were procedurally barred based on Schneider's failure to provide the requisite notice under SDCL 3-21-2. SR 2221 – 907-910. Schneider's deliberate indifference claim, the trial court determined, was not supported by the evidence, which included Schneider's medical records, his communications with DOC employees, and admissions he

made throughout discovery in the matter. SR 2221 – 910-917. Finally, Schnieder’s ADA claim did not survive summary judgment because he was not an “employee” of the DOC for purposes of Title I; Schnieder sought monetary relief in his amended complaint and the ADA is limited to injunctive relief for purposes of Title II; and Schneider did not request any form of prospective injunctive relief for purposes of Title III. SR 2221 – 917-923. The trial court entered its summary judgment order on June 23, 2025. SR 2221 – 924.

Schneider filed an untimely notice of appeal from the trial court’s summary judgment order, on August 16, 2025, which this Court dismissed. SR 2221 – 1065. Following the dismissal, Schneider filed a second notice of appeal. SR 2221 - 1077. However, this second appeal was taken from the trial court’s post-judgment orders denying Schneider’s motions to reconsider, for change of judge, objections to notice of entry of order, and withdrawal of his motion for judgment on the pleadings. *Id.* This appeal on the post-judgment orders followed.

ARGUMENTS

I.

THE COURT LACKS APPELLATE JURISDICTION TO
REVIEW THE TRIAL COURT’S ORDERS FROM WHICH THE
APPEAL HAS BEEN TAKEN.

Despite Schneider’s representations, this is not an appeal from the trial court’s Memorandum Opinion and Order Granting Defendant’s Motion for Summary Judgment and Denying Plaintiff’s Motion for

Judgment on the Pleadings.² See App. B. p. 2. Schneider filed an untimely notice of appeal from that order on August 18, 2025, which this Court dismissed on September 3, 2025. SR 2221 – 1065. After his first appeal from the trial court’s order on summary judgment was dismissed, Schneider filed a second appeal from the trial court’s orders denying his post-judgment motions to reconsider, for change of judge, objections to notice of entry of order, and withdrawal of judgment on the pleadings. SR 2221 – 1077. This second appeal from the orders denying various post-judgment motions is at issue in the instant appeal.

This Court’s appellate “jurisdiction must affirmatively appear from the record.” *Dittus v. Black Hills Care & Rehab. Ctr., LLC*, 2024 S.D. 80, ¶ 8, 15 N.W.3d 741, 744 (quoting *In re S.A.*, 2023 S.D. 47, ¶ 6, 996 N.W.2d 66, 67). “[Q]uestions of jurisdiction can be raised at any time, even sua sponte by this Court.” *Wells v. Wells*, 2005 S.D. 67, ¶ 11, 698

2. The terms “order” and “judgment” are used interchangeably in this matter. Technically, “[o]rders are distinguishable from judgments.” *Dollar Loan Ctr. of S. Dakota, LLC v. Dep’t of Lab. & Regul., Div. of Banking*, 2018 S.D. 77, n.3, 920 N.W.2d 321, 325. “An order is ‘every direction of a court or judge, made or entered in writing and not included in a judgment.’” *Id.* (quoting SDCL 15-6-54(a)). On the other hand, “[a] judgment is a ‘final determination of the rights of the parties in an action or proceeding.’” *Id.* Regardless, when determining whether an order is sufficiently final to constitute a judgment the Court looks to “[t]he substance of the decision, rather than its form or name[.]” *Lamar Advert. of S. Dakota, L.L.C. v. City of Rapid City*, 2020 S.D. 30, ¶ 18 n.1, 944 N.W.2d 793, 800 (quoting *O’Neill v. O’Neill*, 2016 S.D. 15, ¶ 31, 876 N.W.2d 486, 498).

N.W.2d 504, 507. “[T]his Court has only ‘such appellate jurisdiction as may be provided by the legislature. The right to appeal is statutory and therefore does not exist in the absence of a statute permitting it.’” *In re Issuance of Summons Compelling Essential Witness to Appear & Testify in State of Minnesota*, 2018 S.D. 16, ¶ 8, 908 N.W.2d 160, 164 (quoting *State v. Schwaller*, 2006 S.D. 30, ¶ 5, 712 N.W.2d 869, 871).

Under the South Dakota Rules of Civil Appellate Procedure, an appellant may appeal from:

- (1) A judgment;
- (2) An order affecting a substantial right, made in any action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken;
- (3) An order granting a new trial;
- (4) Any final order affecting a substantial right, made in special proceedings, or upon a summary application in an action after judgment;
- (5) An order which grants, refuses, continues, dissolves, or modifies any of the remedies of arrest and bail, claim and delivery, injunction, attachment, garnishment, receivership, or deposit in court;
- (6) Any other intermediate order made before trial, any appeal under this subdivision, however, being not a matter of right but of sound judicial discretion, and to be allowed by the Supreme Court in the manner provided by rules of such court only when the court considers that the ends of justice will be served by determination of the questions involved without awaiting the final determination of the action or proceeding; or
- (7) An order entered on a motion pursuant to § 15-6-11.

SDCL 15-26A-3. The orders from which Schneider has taken this appeal do not meet the requisite statutory criteria for this Court to assume appellate jurisdiction.

Regarding the order denying Schneider’s motion to reconsider, it is well settled that “an order dismissing a motion to reconsider entered by the circuit court does not create a new avenue for appeal.” *People ex rel. S.M.D.N.*, 2004 S.D. 5, ¶ 7, 674 N.W.2d 516, 517. A motion to reconsider is merely “an invitation to the court to consider exercising its inherent power to vacate or modify its own judgment.” *Id.* (quoting *Breeden v. Nebraska Methodist Hospital*, 257 Neb. 371, 598 N.W.2d 441, 444 (1999)). Accordingly, “[a] motion for reconsideration is not a separate and appealable order.” *Id.*

As to the order denying Schneider’s motion for change of judge, that untimely motion was made not only after the submission of argument or proof—it was made after a final judgment had already been entered. SR 2221 – 954. “[I]n order to file an affidavit for change of judge, a party must be ‘entitled to do so.’” *Legendary Loan Link, Inc. v. Larson*, 2017 S.D. 25, ¶ 8, 896 N.W.2d 267, 269 (quoting SDCL 15–12–22). “The submission of ‘argument or proof in support of a motion or application’ to a judge ‘is a waiver of the right thereafter to file an affidavit for change of such judge ... by any party ... who submitted the same.’” *Id.* (quoting SDCL 15-12-24). As a result, Schneider was not entitled to file an affidavit for change of judge in the trial court because he had already waived that right by submitting argument and proof. And this Court has held that an appellant “may not assert a right on appeal that he did not possess below.” *Id.* ¶ 10.

Finally, the orders denying Schneider’s objections to notice of entry of order and his motion to withdraw his judgment on the pleadings are not the types of appealable orders contemplated by SDCL 15-26A-3. The orders are not judgments because they do not “finally and completely adjudicate all of the issues of fact and law presented by the parties for litigation.” *Lamar Advert. of S. Dakota, L.L.C. v. City of Rapid City*, 2020 S.D. 30, ¶ 18 n.1, 944 N.W.2d 793, 800. Nor did the orders prevent a judgment from which an appeal might be taken. Indeed, an appealable order had already been entered by way of the trial court’s order on summary judgment.

Assuming, without conceding, that the orders denying Schneider’s objections to notice of entry of order and his motion to withdraw his judgment on the pleadings may be considered “final orders affecting a substantial right . . . made upon a summary application in an action after judgment[,]” they are still orders that could have been considered on appeal from the trial court’s order on summary judgment. SDCL 15-26A-3(4). And this Court has acknowledged, “[t]he design of this provision was very evidently to secure to an aggrieved party a review of such final orders, affecting substantial rights, as could not be considered on an appeal from the judgment itself.”³ *Wilge v. Cropp*, 74 S.D. 511,

3. This view is further supported by SDCL 15-26A-7, which provides that “[o]n appeal from a *judgment* the Supreme Court may review any order, ruling, or determination of the trial court, including an order denying a new trial, and whether any such order, ruling, or

514, 54 N.W.2d 568, 569 (1952), *abrogated on other grounds by Berwald v. Stan's, Inc.*, 2025 S.D. 33, 24 N.W.3d 420 (quoting *Bailey v. Scott*, 1 S.D. 337, 47 N.W. 286, 287 (S.D. 1890)). Because the orders denying Schneider's objections to notice of entry of the order and his motion to withdraw a filing could have, and appropriately should have, been considered on appeal from the trial court's summary judgment order, they do not invoke this subsection of the statute.⁴ In sum, the Court lacks the statutory authority to assert jurisdiction over the post-judgment orders from which Schneider appeals.

II.

BASED ON THE PROCEDURAL POSTURE OF THIS CASE,
THE COURT IS UNABLE TO REACH THE MERITS OF BOTH
THE TRIAL COURT'S SUMMARY JUDGMENT ORDER AND
THE POST-JUDGMENT ORDERS DENYING RELIEF.

Schneider's appellant's brief is premised on two issues: 1) whether a genuine issue of material fact existed that would have precluded summary judgment; and 2) whether DOC Defendants were liable for alleged injuries to Schneider. App. B. pp. 9-16. However, this Court dismissed Schneider's untimely appeal from the trial court's summary

determination is made before *or after judgment* involving the merits and necessarily affecting the judgment and appearing upon the record." Emphases added.

4. The other subsections of SDCL 15-26A-3, by the plain meaning of the statutory language, clearly do not apply to the orders denying Schneider's objections to notice of entry of order and his motion to withdraw his judgment on the pleadings.

judgment order. SR 2221 – 1065. And with that dismissal, the Court’s ability to review that order ceased. “[F]ailure to file a notice of appeal in a timely manner is a jurisdictional defect and cannot be waived or excused.” *State v. Waters*, 472 N.W.2d 524, 525 (S.D. 1991) (citing *State v. Hare*, 260 N.W.2d 224 (S.D.1977); *Kulesa v. Department of Public Safety*, 278 N.W.2d 637 (S.D.1979); and SDCL 15–26A–92.

Regarding the post-judgment orders from which this appeal was actually taken, even if the Court determined that it had statutory authority to assert jurisdiction, Schneider failed to brief or support an argument on a single issue related to any one of those orders. All his efforts were focused, instead, on the trial court’s summary judgment order. “It is well-settled that the failure to brief an issue and support an argument with authority waives the right to have this Court review it.” *Duerre v. Hepler*, 2017 S.D. 8, ¶ 28, 892 N.W.2d 209, 220. Because Schneider focused his briefing and argument on an order that is not subject to this appeal, and then failed to brief or argue any issues related to the post-judgment orders that are subject to this appeal, it would be impossible for the Court to reach the merits even if it found jurisdiction.

CONCLUSION

The procedural obstacles to review in this case are herculean. The Court lacks the statutory authority to assert jurisdiction over the post-judgment orders pursuant to SDCL 15-26A-3. Even if the Court were to find jurisdiction, Schneider has failed to brief or argue any issues related to those orders. For the above stated reasons, DOC Defendants respectfully request the Court to dismiss this action.

Dated 16th day of March, 2026.

/s/ Amanda Müller

Amanda Müller
Deputy Attorney General
1302 East SD Highway 1889, Ste 1
Pierre, SD 57501-8501
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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 2,165 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 365.

Dated 16th day of March, 2026.

/s/ Amanda Müller
Amanda Müller
Deputy Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of March, 2026, a true and correct copy of Appellee's Brief in the above-captioned matter was served by United States Mail, First Class, postage prepaid upon Sheldon Dean Schneider, Inmate #47989, Mike Durfee State Prison, 1412 Wood Street, Springfield, South Dakota 57062-2238.

/s/ Amanda Müller
Amanda Müller
Deputy Attorney General

31226

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAY 26 2026

Shirley A. Johnson Legal
Clerk

Sheldon Dean Schneider, Pro-Se,
An Individual, Plaintiff & Appellant,
Vs.

STATE OF SOUTH DAKOTA;

ELLIE WASKO, Secretary of Corrections;

ERESA BITTINGER, Warden, AARON

AYNES, Director of Health Services;

ANESSA GEBES, Assistant Director of
Health Services (MDSP); TAMMY DOYLE,

DA Coordinator (MDSP),

Defendants & Appellees.

* APPELLANT'S REPLY BRIEF

* TO

* APPELLEE'S BRIEF

APPEAL FROM THE CIRCUIT COURT OF MINNEHAHA COUNTY

HONORABLE JUDGE JENNIFER MAMMENG

Appellant: Sheldon Dean Schneider
1412 Wood Street
Springfield, SD 57062-2238
Pro-Se, An Individual.

* Attorney for Appellees:
* Amanda Miiller
* Deputy Attorney General
* 1302 E. Highway 14, Suite 1
* Pierre, SD 57501-8501
*

BOTH NOTICE OF APPEALS WERE TIMELY FILED #31197 & #31226

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ISSUE: THE ISSUE IS WHETHER OR NOT THE APPELLANTS NOTICE OF APPEAL #31197 WAS TIMELY FILED. This Court denied first attempt to Appeal. However, the Appellant filed timely Motions which tolled the time to file his Notice of Appeal and being Pro-Se and incarcerated there are Unique Circumstances Applicable.	
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TABLE OF AUTHORITIES:

28 U.S.C. § 2107
42 U.S.C. §§ 1983 and 1985
Arnold, 238 F.3d at 994-95
Article VI § 1,6,18 & 20 of the South Dakota Constitution
Boag v. MacDougell, 454 U.S. 364, 102 S.Ct. 594, 70 L.Ed.2d 551 (1982)
Bowles v. Russell, 551 U.S. 205, 127 S.Ct. 2360, 2366, 168 L.Ed.2d 96 (2007)
Brooks v. Ferguson-Florissant Sch. Dist., 113 F.3d 903, 904 (8th Cir. 1997)
Department of Banking v. Pink, 317 U.S. 264, 266, 63 S.Ct. 233, 234, 87 L.Ed. 254 (1942)
Estle v. Coutry Mutual Insurance Co., 970 F.2d 476, 478 (8th Cir. 1992)
Fallen v. United States, 378 U.S. 139, 84 S.Ct. 1689, 12 L.Ed.2d 760
Fazzomo v. Northeast Ohio Correctional Center, 473 F.3d 229 (6th Cir.2006)
Fed.R.App.P.4(a)(1)(A)
Fed.R.App.P.4(a)(4)(A)(i)
Fed.R.App.P.4(a)(4)(A)(iv)&(vi)
Fed.R.App.P.4(a)(4)(c),(F)
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Gomez-Diaz v. U.S., 433 F.3d 788 (11th Cir. 2005)
Hable v. Pairokro, 915 F.2d 394, 395 (8th Cir. 1990)
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SDCL § 15-26A-6
SDCL § 15-6-59 and 15-6-50(b)
SDCL § 15-6-6(e)
SDCL § 15-6-60(b)(1)
Smith v. Hermsen, 1997 SD 138 ¶8, 572 N.W.2d 835, 838
Thompson v. INS, 375 U.S. 384, 386-87, 83 S.Ct. 397, 11 L.Ed.2d 404 (1964)
United States v. Duke, 50 F.3d 571, 574 (8th Cir.) cert. denied 516 U.S. 885, 116 S.Ct. 224, 133, L.Ed.2d (1995)

PRELIMINARY AND JURISDICTIONAL STATEMENT:

This is an Appeal of the “Memorandum Opinion and order Granting Defendants’ Motion for Summary Judgment and Denying Plaintiffs Motion for Judgment on the Pleadings”, entered on the 23rd day of June, 2025, regarding the Second Judicial Circuit Court, Minnehaha County, in Case File No. 49CIV23-2221. The Appellant then filed a timely “Motion to Reconsider All Motions and Other Documents”, along with a “Motion for Judgment”, within 10days, that were heard August 14th,2025, After Denial, Appellant filed a timely Notice of Appeal August 25th,2025. Appellants filings are subject to the Mail Box Rule being he is Pro-Se and incarcerated; Appeal inadvertently went into default and is now excused from default by this Honorable Court to file, Appellant Brief, filed January 12th, 2026, Defendants/Appellees filed their response Brief March 13th,2026 and Appellants due date to file Reply Brief is June 8th,2026. This Honorable Court possesses jurisdiction of this Matter, Pursuant to SDCL § 15-26A, inter alia, and for Good Cause Shown in the Best Interest of Justice.

STATEMENT OF THE ISSUES:

THE ISSUE IS WHETHER OR NOT THE APPELLANTS NOTICE OF APPEAL #31197
WAS TIMELY FILED.

This Court denied first attempt to Appeal. However, the Appellant filed timely Motions which tolled the time to file his Notice of Appeal and being Pro-Se and incarcerated there are Unique Circumstances Applicable.

APPLICABLE LAW:

COMES NOW, Sheldon Dean Schneider, the Appellant, Pro-Se, Respectfully Moves this Honorable Court to Liberally Construe "ALL" filed Documents, as to do Substantial Justice for the Pro-Se litigant, Appellant, Good Cause is Shown and this Request is Made in Good-Faith, Appellant, Asserts and states as Follows:

**Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)*(Pro-Se litigants pleadings are to be construed liberally and held to a less stringent standard than pleadings drafted by Lawyers; if a Court can reasonably interpret Pro-Se pleadings to state a cognizable claim on which litigant could prevail, it should do so despite failure to cite proper Legal Authority, confusion of Legal theories, poor syntax and sentence structure, or litigants unfamiliarity with pleading requirements). see e.g. *Boag v. MacDougell, 454 U.S. 364, 102 S.Ct. 594, 70 L.Ed.2d 551 (1982); Fazzomo v. Northeast Ohio Correctional Center, 473 F.3d 229 (6th Cir.); Gomez-Diaz v. U.S., 433 F.3d 788 (11th Cir.2005).*

WHEREFORE, Sheldon Dean Schneider, humbly Requests, Prays and Hopes that this Honorable Court "WILL" Liberally Construe "ALL" filed Documents, as to do Substantial Justice for the Pro-Se litigant, for Good Cause Shown in the Best Interest of Justice. Appellant further Requests that this Order be Continuing in affect.

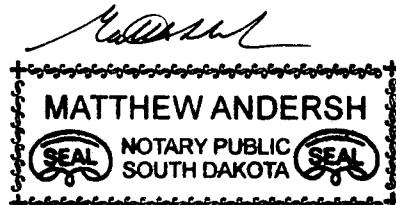
Dated this 21st Day of May, 2026.

Respectfully Submitted,

X: Sheldon Schneider
Sheldon Dean Schneider
1412 Wood Street
Springfield, SD 57062-2238
Pro-Se, An Individual.

Subscribed and sworn to me this
21st day of May, 2026

My Commission Expires May 12, 2031



PRISON MAIL BOX RULE:

Under Rule 4(a)(1), Pro-Se prisoners' Notice of Appeal are "filed" at the moment of delivery to prison authorities for forwarding to the district Court. *cf. Fallen v. United States*, 378 U.S. 139, 84 S.Ct. 1689, 12 L.Ed.2d 760 (Stewart, J., concurring). Unskilled in Law, unaided by counsel, and unable to leave the prison, a Pro-Se prisoner's control over the processing of his Notice necessarily ceases as soon as he hands it over to the only public officials to whom he has access-the prison authorities-and the only information he will likely have is the date he delivered the Notice to those authorities and the date ultimately stamped upon it. The 30-day deadline for filing Notice of Appeal set forth in 28 U.S.C. § 2107, which applies to civil Actions including Habeas proceedings, does Not preclude relief for petitioner, since that statute does Not define when a Notice has been "filed" nor in any way suggests that, in the unique circumstances of a Pro-Se prisoner, it would be inappropriate to conclude that such filing occurs at the moment of delivery to prison officials, such conclusion is Not negated by the fact that Rule 3(a) and 4(a)(1) specify that the Notice should be "filed with the clerk of the district Court", since the relevant question is one of timing, Not destination, and neither Rule sets forth criteria for determining the moment at which the filing occurred. The general Rule that receipt by the Court Clerk constitutes filing, although appropriate for most civil Appeals, should Not apply in the Pro-Se prisoner context. Nothing in either Rule 3(a) or Rule 4(a)(1) compels the conclusion that receipt by the clerk must be the moment of filing in All cases, and, in fact, a number of Federal Courts have recognized exceptions to the general principle. Moreover, the rationale for the general Rule is that the Appellant has No control over delays after the Court clerk's receipt of the Notice – a rationale suggests that the moment of filing here should be the moment when the Pro-Se prisoner necessarily loses control over his Notice: the moment of delivery to prison authorities for forwarding. The Bright-Line Rule recognizing receipt by prison authorities as the moment of filing will also decrease disputes and uncertainty as to when a filing actually occurred, since such authorities keep detailed logs for recording

the date and time at which they receive papers for mailing and can readily dispute a prisoner's contrary assertions. Relying on the date of receipt, by contrast, would raise difficult questions whether the prison authorities, the Postal Service, or the Court Clerk is to blame for any delay. Pp. 2381-2385.

Applying the "Prison Mail Box Rule" in this case would promote the ends of Justice being meet, head on for the Pro-Se prisoner, litigant, for Good Cause is Shown in the Best Interest of Justice!

STATEMENT OF CASE AND FACTS:

This case involves an amended “Complaint of Personal Injury and Violations of Civil and ADA Rights” filed by Plaintiff Sheldon Dean Schneider (Plaintiff/Appellant). Plaintiff claims that Defendants State of South Dakota, Kellie Wasko, Teresa Bittinger, Aaron Haynes, Vanessa Gebes, and Tammy Doyle, individually and in their official capacities (collectively Defendants/Appellees), failed to provide adequate medical care and treatment to him, and that Defendants have violated the American with Disabilities Act (ADA) as to their conduct towards him. Plaintiff asserts claims of 1) Negligence; 2) Negligence Per Se; 3) violation of the ADA;; 4) an Eighth Amendment and Fourteenth Amendment claim under 42 U.S.C. §§ 1983 and 1985; and 5) a claim for “Wrongful Acts”. Plaintiff seeks a monetary award of \$10 million dollars as well as “punitive damages, presumed damages, hedonic damages, and compensatory damages, as applicable” in an unspecified amount.

This matter came before the Court on April 2nd,2025, to address the parties motions, Plaintiff’s Motion for Judgment on the Pleadings, Plaintiff’s Motion for Expert Witness, Plaintiffs Motion for Specific Discovery, Plaintiff’s Motion to Strike, Plaintiffs Motion for Appointment of Counsel, and Defendants’ Motion for Summary Judgment. Plaintiff appeared Pro-Se via Zoom. Defendants were represented at the Hearing by Assistant Attorney General Ryan McFall. Plaintiff’s Motion for Expert Witness, Plaintiffs Motion for Specific Discovery, Plaintiff’s Motion to Strike, and Plaintiff’s Motion for Appointed Counsel were orally denied at the conclusion of the Hearing. The Court took Plaintiff’s Motion for Judgment on the Pleadings and Defendants’ Motion for Summary Judgment under advisement. After considering the parties’ Briefs, oral arguments, and applicable authorities, the Court granted Defendants Motion for Summary Judgment and denies all of Plaintiffs Motions. (Plaintiff wants to make the South Dakota Supreme Court aware Plaintiff also filed Motion to Oppose Defendants Summary Judgment with supporting Brief on March 24th,2025, these Documents were never heard and completely overlooked, even though the Plaintiff used them in his oral arguments

during April 2nd,2025, Hearing). On July 7th, 2025, the Court filed the Plaintiffs Motion to Reconsider All Motions and Other Documents, with supporting Affidavit this Document was actually “Prison Mail Box Rule” filed June 30th, 4days after the Defendants Notice of Entry dated June 26th,2025, therefore, tolling the time to file a Notice of Appeal for the Plaintiff. Plaintiff filed several other Motions including Motion to Withdrawal Plaintiffs Judgment on the Pleadings and Fully entertain Plaintiffs Motion and Brief in Response/Oppose to Defendants Summary Judgment and a Motion and Notice for Hearing. Plaintiff received Notice from the Circuit Court that there will be a Hearing held to Reconsider All Motions and Other Documents on August 14th,2025, the Court then Denied all newly filed Motions and the Motion to Reconsider at the Hearing. Plaintiff’s Notice of Appeal was timely filed on August 25th,2025. Plaintiff was never Notified by the Second Judicial Circuit Court, Minnehaha County, or any Court, that his Notice of Appeal was accepted with deadlines for filing. Due to never being Notified Plaintiffs Appeal went into Default. Plaintiff received letter to relieve default on December 29th,2025, Plaintiff timely filed a Motion and Affidavit to relieve default. Note: Plaintiff/Appellant still has not received Transcripts for April 2nd,2025 and August 14th,2025, Hearings as requested in support of his Appeal; Nor has he received a generated Order of denial for his Motion for Judgment. Appellant submitted his Appellant Brief filed January 12th,2026, Defendants/Appellees filed their response Brief March 13th,2026, and Appellant hereby submits his Reply Brief due June 8th, 2026.

FACTUAL BACKGROUND:

Plaintiff arrived as an inmate at the South Dakota State Penitentiary on May 22nd, 2023. He asserts that he arrived at the penitentiary with a 30% break in the Right hand/middle finger with a protective brace and that the South Dakota State Penitentiary would not allow the Plaintiff to have the protective brace, their reasoning it was metal. They took the brace and did not provide a functional equivalent brace for the Plaintiff. He relayed to the nurse/med-tech his medications of Oxycodone, 3 times a day, 900mg Gabapentin, 3 times a day, and 20mg IR Methylphenidate, 3 times a day. Plaintiff asserts he notified health services of the need to continue said medications and/or need for titration and the oncoming of serious withdrawals, which Plaintiff would need to be monitored for serious side effects. Plaintiff asserts he was denied adequate reasonable and necessary access to medicine to prevent withdrawals and serious pain from his medical conditions. Per policy protocol Plaintiff was to be seen within 10 days of intake. As record reflects it took 16 days for him to talk to a health care provider about his concerns. Plaintiff declares his fundamental right to health care under the South Dakota Constitution was violated. Defendants failed to properly follow multiple mandatory policies and protocol by waiting 16 days instead of 10 days for Plaintiff to see the Provider. Plaintiff was Ordered to be titrated off Gabapentin by Dr. Rector; Dr. Aaron Haynes approved this Order then denied it without cause. Plaintiff asserts that this resulted in serious withdrawals that caused multiple seizures and severely re-injuring or worsening of the break in his right hand/middle finger. He asserts this caused him excruciating pain in the Plaintiff's nerves, neck, left shoulder, and right hand/middle finger. He states the Defendants did not follow medical Orders and did not administer withdrawal medications. Plaintiff suffered obvious signs of an injury and serious withdrawal that even a lay person could tell the Plaintiff was suffering and not ok. He asserts that subsequent X-Rays show that his fracture was worsened to 70% and that when he was seen at Avera Orthopedics, he was told he had taken too long to have appropriate surgery. He claims he lost the opportunity to have his hand fixed

surgically. He further states Defendants failed to provide adequate medical care to Plaintiff causing a denial of Equal Protection. On November 6th, 2023, Plaintiff was smashed in a crash gate by C.O. Payton, again, re-breaking Plaintiffs right hand/middle finger this time from a 70% break to a nearly 90-100% break. Plaintiff also states the same day C.O. Payton smashed the chemical dependency counselor “Brandi” in the crash gate. On February 26th, 2024, Plaintiff for the third time was cold turkeyed from his medications of 900mg Gabapentin, 3 times a day, and 20mg IR Methylphenidate, 3 times a day, with adverse side effects. Plaintiff also states that he has a disabilities and Defendants have failed to provide reasonable accommodations under ADA. He brings claim under 42 U.S.C. §§ 1983 and 1985 declaring that the Defendants were Deliberately Indifferent in their lack of medical care and services to the point of cruel and unusual punishment.

Defendants move for Summary Judgment alleging that there are No disputed material facts, and they are entitled to judgment as a Matter of Law. Trial Court granted the Defendants Motion for Summary Judgment. Plaintiff Moved the court within 10days to Motion to Reconsider All Motions and Other Documents and a Motion for Judgment, based on perjury by Aaron Haynes and submitted Medical Records. Trial Court denied Plaintiffs Motions August 14th, 2025. Plaintiff timely Appeals August 25th,2025. Plaintiff relieved Appeal from default and filed Appellant Brief January 12th,2026. Defendants/Appellees filed their response Brief March 13th,2026 and Appellant hereby submits his Reply Brief due June 8th,2026.

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Sheldon Dean Schneider, Pro-Se,
An Individual, Plaintiff & Appellant,
Vs.
STATE OF SOUTH DAKOTA;
KELLIE WASKO, Secretary of Corrections;
TERESA BITTINGER, Warden, AARON
HAYNES, Director of Health Services;
VANESSA GEBES, Assistant Director of
Health Services (MDSP); TAMMY DOYLE,
ADA Coordinator (MDSP),
Defendants & Appellees.

* AFFIDAVIT IN SUPPORT OF
*
*TIMELINESS OF PLAINTIFF/APPELLANTS
*
* NOTICES OF APPEAL
*
*
*
*
*
*

I, Sheldon Dean Schneider, being duly sworn under oath, do depose and state that I am the Affiant, that I have composed the foregoing "Affidavit in Support of Timeliness of Plaintiff/Appellant's Notices of Appeal" and that it is true and correct to the Best of my knowledge, information and Belief, so, HELP ME GOD:

- 1) I am the Plaintiff & Appellant in the Above-Entitled Cause.
- 2) This Affidavit in Support of Timeliness of Plaintiff/Appellant's Notices of Appeal is Made in Good-Faith.
- 3) Good Cause can be Shown for the Timeliness of the Plaintiff/Appellant's Notices of Appeal, those facts and circumstances are presented and supported herein this Affidavit.
- 4) Plaintiff & Appellant is Pro-Se and incarcerated without "Any" Legal training, his filings were made in Good-Faith and they should be liberally construed as to do substantial Justice.
- 5) Good Cause can be Shown to liberally construe All the Pro-Se, Plaintiff/Appellant's filings to protect his Access to the Courts and his Rights to Due Process and Fundamental Fairness,

Pursuant to Article VI § 1, 6, & 20 of the South Dakota Constitution and other various Amendments of the U.S. Constitution.

- 6) Pro-Se filings No Matter how “inartfully” presented are to be construed as to do substantial Justice.
- 7) The Trial Court has a Duty to be courteous and fair.
- 8) The Trial Courts preference is that matters be resolved on their merits and Not on technical violations and/or procedural errors. This was clearly Not the case for my case.

TIMELINESS OF MY NOTICES OF APPEAL #31197 & #31226:

- 9) On June 23rd, 2025, The Court filed: “Memorandum: Opinion and Order Granting Defendants’ Motion for Summary Judgment and Denying Plaintiff’s Motion for Judgment on the Pleadings”.
- 10) On June 26th, 2025, Defendants Counsel filed: “Notice of Entry: of Memorandum Opinion and Order Granting Defendants’ Motion for Summary Judgment and Denying Plaintiff’s Motion for Judgment on the Pleadings”.
- 11) Plaintiff/Appellant immediately filed multiple Motions, one was due to the last minute change in Judges from Judge Power to Judge Mammenga, July 7th, 2025, “Motion to Reconsider All Motions and Other Documents”, “Motion to Withdrawal Plaintiffs Judgment on the Pleadings and Fully Entertain Plaintiff’s Motion and Brief in Response/Oppose to Defendants Summary Judgment”, due to a Pro-Se misunderstandings.
- 12) Plaintiff/Appellant, On July 7th, 2025, filed a Notice and Motion for Hearing along with a letter Requesting to Hear his “Motion for Judgment”, All were filed and Requested to be heard within the thirty (30)days to file “Notice of Appeal”, the Court responded by scheduling a Hearing for August 14th, 2025, Therefore, Plaintiff/Appellant did Not file his

Notice of Appeal,* “Because the Court Granted a ReHearing to Reconsider All Motions and Other Documents”.

13) Plaintiff/Appellant did Not file his “Notice of Appeal”, until after the Hearing the Court scheduled August 14th, 2025, to Reconsider All Motions and Other Documents, Because Pursuant to SDCL § 15-26a-6 provides:

“The running of the time for filing a Notice of Appeal is terminated as to All parties by a timely Motion filed in the Circuit Court by any party Pursuant to § 15-6-59 or § 15-6-50(b), or both, and the full time for Appeal fixed by this section commences to run “after” the Order made Pursuant to such Motion shall be signed, attested, filed and written Notice of Entry thereof shall have been given to the adverse party or if the Circuit Court fails to take Action on such Motion within the time prescribed, then the date shall be computed from the date on which the time for Action by the Circuit Court expires.

14) Plaintiff/Appellant Notified and Requested the Minnehaha County Circuit Court and the South Dakota Supreme Court, for transcripts for the Hearings held April 2nd, 2025, and Hearing held August 14th, 2025, that the transcripts contained important, relevant material in support of my position on Appeal. Both Courts did Not respond at first then finally the Minnehaha County Circuit Court replied telling me they needed over \$350.00 dollars to even start transcribing even though I am indigent, Pro-Se and Not able to afford costs, I am also incarcerated, for theses reasons I showed Good Cause and my Request was made in Good-Faith.

15) Plaintiff/Appellant Notified and Requested a generated Order of denial for “Motion for Judgment” filed on March 24th, 2025, and Heard on the Hearing held August 14th, 2025, without these documents the time to file a Notice of Appeal, has not started Pursuant to

statute, as expressed in Plaintiff/Appellants letters to the Minnehaha County Circuit Court and the South Dakota Supreme Court, letters filed August 25th,2025.

- 16) Plaintiff/Appellant timely filed a “Motion to Reconsider All Motions and Other Documents”, that the Court deemed filed July 7th,2025, which is 11 days from the Notice of Entry, However, as demonstrated and argued is the “Prison Mail Box Rule” and factoring in the six (6) days required by SDCL § 15-6-6(e) for service by mail, Appellants “Motion to Reconsider All Motions and Other Documents” is timely filed July 1st,2025, this is without factoring in weekends and legal holidays. Appellant further argues the “Prison Mail Box Rule” (Please see Attached to this Affidavit and Reply Brief the “Certificate of Service” for “Motion to Reconsider All Motions and Other Documents”, with Notice and Motion for Hearing, dated and notarized June 30th,2025, Date reflected on Certificate of Service is same date deposited into the Prisons internal Mail System, outside of Plaintiff/Appellants control therefore declared filed pursuant to the “Mail Box Rule”, as ALL of the Pro-Se, Plaintiff/Appellants Documents Affirmatively show. Labeled as Exhibit A). Timely filed within 10days tolling the time to file Notice of Appeal.
- 17) Plaintiff/Appellants first Notice of Appeal #31197 and Docketing Statement declared Motions filed tolling the time to file his Notice of Appeal. Appellant also sent letters to both Courts explaining what he still needed for filing.
- 18) A party may toll the 30-day time period, however, by filing a Motion under either Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure within 10days after the district Court has entered a final judgment. Fed.R.App.P.4(a)(4)(c),(F) *United States v. Duke*, 50 F.3d 571, 574 (8th Cir.). cert. denied, 516 U.S. 885, 116 S.Ct. 224, 133, L.Ed.2d (1995).
- 19) In most private civil cases such as this one, a party wishing to Appeal the judgment of the district Court must file a Notice of Appeal within 30days of the date the district Court’s final

judgment is entered. *Fed.R.App.P.4(a)(1)(A)*; 28U.S.C. § 2107; *Arnold*, 238 F.3d at 994-95.

Because the 30-day period for filing an Appeal is statutory, it is a “jurisdictional” requirement that must be met; it cannot be forfeited or waived. *Bowles v. Russell*, 551 U.S. 205, 127 S.Ct.

2360, 2366, 168 L.Ed.2d 96 (2007). However, “if a party timely files” a Motion for Judgment under Rule 50(b), the 30-day period for filing a Notice of Appeal is tolled until “the entry of the Order disposing of the... Motion”. *Fed.R.App.P.4(a)(4)(A)(i)*. (*Emphasis Added*).

20) “The trial Courts discretion is to be exercised liberally in accord with Legal and equitable principles in Order to promote the ends of Justice”. Id. (quoting *Smith v. Hermesen*, 1997 SD 138, ¶8, 572 N.W.2d 835,838).

21) A timely petition for rehearing tolls the running... period (in which an Appeal must be filed) because it operates to suspend the finality of the ... Court’s Judgment, pending the Court’s further determination whether the judgment should be modified so as to alter its adjudication of the Rights of the parties”. *Department of Banking v. Pink*, 317 U.S. 264, 266, 63 S.Ct. 233, 234, 87 L.Ed. 254 (1942).

22) Pro-Se, Appellant declares the “Prison Mail Box Rule”, Not applying this Rule in this case would be a severe injustice. Once a Prisoner turns over his filings to an Official Officer of the prison, they are declared filed. All of the Plaintiff/Appellants “Certificate of Service” are dated and notarized the same day as they are deposited into the prisons internal Mail System. It would be impossible to meet any filing deadlines if this Rule was Not accepted and implemented. There has been local news about the United States Post Office under investigation and taking weeks to months for mail to arrive at its destinations due to shut downs of smaller facilities. Thank You, Please Understand to promote the ends of Justice.

***IN CONCLUSION*:**

If I have a Hearing pending to Re-Hear my Motions a Notice of Appeal would have been premature for filing at that time Pursuant to statute. Therefore, based upon the Above-foregoing Reasons Defendants/Appellees Brief is Null and Void and without Merit. The South Dakota Supreme Court "Must" Reverse and Remand, my case back to Circuit Court to have both parties start preparing for Trial [or] to be immediately Ordered into Mediation, based upon the Defendants/Appellees perjury and the Merit of the Plaintiffs Cause of Action, supported by overwhelming Evidence as submitted to the Circuit Court, Minnehaha County, for Good Cause Shown in the Best Interest of Justice!

OATH AND DECLARATION:

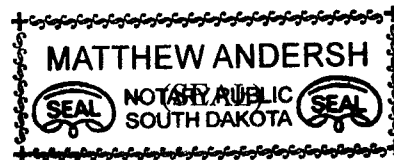
This is being Respectfully submitted, filed, signed and sworn to under the penalty of perjury, Pursuant to SDCL § 18-7-6 and 28 U.S.C. § 1746 on this 21st day of May, 2026.

Respectfully Submitted,
X: Sheldon Dean Schneider
Sheldon Dean Schneider
1412 Wood Street
Springfield, SD 57062-2238
Pro-Se, An Individual.

Sworn/Affirmed Before me this 21st day of May, 2026.

Matthew Andersh
NOTARY PUBLIC

My Commission Expires May 12, 2031
NOTARY COMMISSION EXPIRES



ARGUMENT:

Section 1983 Plaintiffs also have the option of suing in State Courts, which are required by the Supremacy Clause to exercise concurrent jurisdiction. When § 1983 Actions are filed in State Courts, the substantive Federal Law of § 1983 controls. Being the Appellant is asserting a Federal § 1983 claim, Federal Rules of Civil Procedure, are applicable. Appellants late filing of his Notice of Appeal can be attributable to excusable neglect. There should be no dispute that the Appellant having filed a “Motion to Reconsider All Motions and Other Documents” and requesting his “Motion for Judgment” to be heard with 10days after the Notice of Entry, would believe a Notice of Appeal would be premature if the Circuit Court Scheduled a Hearing to rehear All Motions and Other Documents. Appellant feels his inadvertence and mistake being he is Pro-Se and that the Court granted Summary Judgment for the Defendants which is an extreme remedy, the same as a default judgment in its extreme application, could be treated in the same context as SDCL § 15-6-60(b)(1) “Excusable Neglect” which would allow relief from a default judgment must be neglect of a nature that would cause a reasonably prudent person under similar circumstances to act similarly.

Here, Appellant declares he was mislead by the Circuit Court when they scheduled a Hearing August 14th,2025, to Reconsider All Motions and Other Documents, along with other Motions, including his Motion for Judgment the request was made within 10days after the filing of the Notice of Entry. The Appellant adamantly requested for his Motion for Judgment to be heard and that the Circuit Court generate a final Order of denial. Appellant also sought transcripts from Hearings held April 2nd,2025, and August 14th,2025, in support of his Appeal. Appellants grounds for judgment as a Matter of Law were based on the fact the Defendants committed perjury under Oath on the Plaintiffs Request for Admissions stating MRI’s came back negative that’s why they were not treating his serious medical needs. When in reality the MRI’s that were conducted showed injury and Plaintiff was sent to an outside specialist at the pain clinic. Therefore, the Defendants breached the Duty of Care owed to

the Plaintiff. Defendants violated multiple established policies and procedures throughout the course of treatment. These acts cannot go unnoticed.

Appellant filed his first Notice of Appeal #31197 declaring SDCL § 15-6-50(b) motion and other motions within 10 days tolling his time to file, but for reasons unknown was denied. Appellant then filed his second attempt based on the same content along with the fact the Court scheduled a Hearing to Reconsider All Motions and Other Documents, which Pro-Se, Plaintiff understood to be a rehearing of **“Everything”** including his opposition to Defendants Summary Judgment, that the Notice of Entry was filed on. Plaintiff also had his “Motion for Judgment” heard August 14th, 2025, which tolls the time to file his Notice of Appeal. “A timely petition for rehearing tolls the running... period (in which an Appeal must be filed) because it operates to suspend the finality of the... Court’s Judgment, pending the Court’s further determination whether the judgment should be modified so as to alter its adjudication of the Rights of the parties”. *Department of Banking v. Pink*, 317 U.S. 264, 266, 63 S.Ct. 233, 234, 87 L.Ed. 254 (1942). “If a party timely files” a Motion for Judgment under Rule 50(b), the 30-day period for filing a Notice of Appeal is tolled until “the entry of the Order disposing of the ... Motion”. Fed.R.App.P.4(a)(4)(A)(i). (Emphasis Added).

UNIQUE CIRCUMSTANCES DOCTRINE:

An Appellant tolls the thirty-day period by filing post-judgment motions under Federal Rules of Civil Procedure 59(e) and 60, respectively, within ten days of the Entry of Judgment. Fed.R.App.P.4(a)(4)(A)(iv)&(vi). Appellant did in fact move for post-judgment relief in the Circuit Court under Rules 59(e) and 60(b). The Circuit Court docketed Schneider’s post-judgment motions on July 7th, 2025, eleven days after the Court entered judgment. Pursuant to the Prison Mail Box Rule, the Appellants Notarized “Certificate of Service” reflects a file date of June 30th, 2025, the same date deposited into the Prisons internal Mail System, therefore, outside of Schneider’s control and declared filed, Pursuant to the Mail Box Rule and inter alia. (Exhibit A).

A generation ago, the Supreme Court crafted an equitable exception to the strict timing provisions for Notice of Appeal. A Court of Appeals may toll the Notice of Appeal period if the district Court erroneously believed that a litigant's Rule 59(e) Motion was timely filed, and the litigant relied upon the Court's express representation that the Motion was timely filed. *Thompson v. INS*, 375 U.S. 384, 386-87, 83 S.Ct. 397, 11 L.Ed.2d 404 (1964)(*per curiam*). In a later case, the Court explained that, "by its terms, *Thompson* applies only where a party has performed an Act which, if properly done, would post pone the deadline for filing his Appeal and has received specific assurance by a judicial officer that this Act has been properly done". *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 179, 109 S.Ct. 987, 103 L.Ed.2d 146 (1989).

This equitable exception has come to be known as the "unique circumstances" doctrine. see e.g. *Schwartz v. Priddy*, 94 F.3d 453, 456 (8th Cir. 1996). The doctrine permits an Appeal from an untimely Rule 59(e) Motion, when the district Court "specifically assures" a party that its Motion is timely, and the party relies upon the assurance in failing to file a timely Notice of Appeal. *Osterneck*, 489 U.S. at 179, 109 S.Ct. 987; *Thompson*, 375 U.S. at 386-87, 84 S.Ct. 397.

The answer to this conundrum lies in the distinction that, in "unique circumstances" cases, the district Court itself is unaware of a timing defect. The doctrine rescues an Appellant from a district Court's error because the Appellant ought not pay the price for the district Court's gaffe. The sin qua non of the "unique circumstances" doctrine, then, is a district Court's misconception that an untimely post-judgment motion is timely. For if the district Court knows that an Appellant's Rule 59(e) motion is untimely, yet nevertheless assures the Appellant that the motion is timely, the Court Acts *ultra vires*. Cf. Fed.R.Civ.P.6(b)(prohibiting extensions of time to file Rule 59(e) motions). In that instance, though the Appellant may rely upon the district Court's Action, the equitable aspect of the "unique circumstances" doctrine is absent because the district Court purposefully acted without authority to do so. In sum, the "unique circumstances" doctrine is appropriately cabined to instances in which the

district Court is unaware of the untimeliness of a post-judgment motion, and the Appellant relies upon the Court's erroneous representation that the Motion is timely. To expand the doctrine to include cases where the district Court realized the timing infirmity would invite the evisceration of Congress's carefully-planned scheme of federal jurisdiction.

Appellant contends that the "unique circumstances" doctrine applies because the Circuit Court responded to the Appellants post-judgment motions by scheduling a new Hearing within the 30day window to file his Notice of Appeal. Appellant Schneider should be granted Safe Harbor in the "unique circumstances" doctrine. The Circuit Court did not require leave to file, but responded by granting a new Hearing. Therefore, Appellants objections to Notice of Entry, Motion to Reconsider All Motions and Other Documents, Motion to Withdrawal Judgment on the Pleadings and Fully Entertain Motion in Response/Oppose to Defendants Summary Judgment, Notice and Motion for Hearing, were timely filed. Appellant has clearly demonstrated exceptional circumstances warranting post-judgment relief. see *Brooks v. Ferguson-Florissant Sch. Dist.*, 113 F.3d 903, 904 (8th Cir. 1997) (requiring a Rule 60(b) movant to demonstrate exceptional circumstances to justify relief).

The barrier of the 30-day Rule is Not impenetrable, however, for the Rules provide that the district Court may, 'upon a showing of excusable neglect or good cause,' extend the time for filing a Notice of Appeal. Fed.R.App.P. 4(a)(5). The Appellees raised NO Objections to the timeliness of the post-judgment Motions filed by the Appellant and the Circuit Court responded erroneously by determining that the post-judgment motions and objections were filed "in ample time". Appellant filed his Notice of Appeal within 30days of the denial of the post-judgment motions that were timely filed.

Here, the Appellant did an Act which, if properly done, postponed the deadline for the filing of his Appeal. Here, the Circuit Court concluded that the Act had been properly done. Here, the Appellant relied on the Circuit Court's statements and scheduling of a new Hearing and filed the Appeal within the assumedly new deadline beyond the old deadline.

An Appeal may be allowed under certain “unique circumstances”. *Estle v. Country Mutual Insurance Co.*, 970 F.2d 476, 478 (8th Cir. 1992)(quoting *Harris Truck Lines, Inc. v. Cherry Meat Packers, Inc.*, 371 U.S. 215, 217, 83 S.Ct. 283, 285, 9 L.Ed.2d 261 (1962)(per curiam). “The unique circumstances exception to Rule 4(a) protects a party who reasonably relied on erroneous district Court Action that caused the party to file an untimely Notice of Appeal”. Id. (quoting *Hable v. Pairokro*, 915 F.2d 394, 395 (8th Cir. 1990).

In this case, the Circuit Court responded to a “Motion to Reconsider All Motions and Other Documents”, with supporting Affidavit (Mail Box Filed June 30th,2025), a “Motion and Notice for Hearing”, with supporting Affidavit (Mail Box Filed June 30th,2025), a “Motion to Withdrawal Plaintiffs Judgment on the Pleadings and Fully Entertain Plaintiffs Motion in Response/Oppose to Defendants Summary Judgment”, with supporting Affidavit and a “Motion of Objections to Defendants Notice of Entry of Memorandum Opinion and Order Granting Defendants Motion for Summary Judgment and Denying Plaintiffs Judgment on the Pleadings”, with supporting Affidavit. By scheduling a Re-Hearing August 14th,2025, as a result, Schneider was “lulled into inactivity” by the Circuit Courts representation that it was allowing a New Hearing to rehear ALL Motions and Other Documents in effect making the original Hearing Order null and that the Matter was under Advisement. The clear inference from the Circuit Court’s Action was that a timely Notice of Appeal could be filed after the Circuit Court Re-Heard the merit of the Motions. Schneider could Not have been expected to file a Notice of Appeal from an Order that was being Re-Heard and Reconsidered, the Order was null by the Circuit Courts Actions. Until after the August 14th,2025, Hearing. Notice of Appeal would have been premature.

IN CONCLUSION:

If I have a Hearing pending to Re-Hear my Motions a Notice of Appeal would have been premature for filing at that time Pursuant to statute. Therefore, based upon the Above-foregoing Reasons and Arguments, Defendants/Appellees Brief is Null and Void and without Merit. The South Dakota Supreme Court "Must" Reverse and Remand, my case back to Circuit Court to have both parties start preparing for Trial [or] to be immediately Ordered into Mediation, based upon the Defendants/Appellees perjury and the Merit of the Plaintiffs Cause of Action, supported by overwhelming Evidence as submitted to the Circuit Court, Minnehaha County, Appellant hereby invokes his Right to Trial by Jury Pursuant to Article VI § 6 of the South Dakota Constitution.* For Good Cause Shown in the Best Interest of Justice!

OATH AND DECLARATION:

This is being Respectfully submitted, filed, signed and sworn to under the penalty of perjury, Pursuant to SDCL § 18-7-6 and 28 U.S.C. § 1746 on this 21st day of May, 2026.

Dated this 21st day of May, 2026.

Respectfully Submitted,

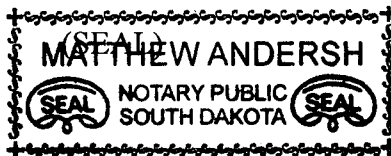
X: Sheldon Dean Schneider
Sheldon Dean Schneider
1412 Wood Street
Springfield, SD 57062-2238
Pro-Se, An Individual.

Sworn/Affirmed Before me this 21st day of May, 2026.

Matthew Andersh
NOTARY PUBLIC

My Commission Expires May 12, 2031

NOTARY COMMISSION EXPIRES



CERTIFICATE OF COMPLIANCE:

Pro-Se, Appellant did his absolute best to follow Certificate of Compliance, Pursuant to SDCL § 15-26A-66(b)(4), the undersigned does hereby certify the length of this Reply Brief complies with type and volume limitations set forth in SDCL § 15-26A-66(b)(2), Appellant, used Word Processing System to prepare this Reply Brief.

Dated this 21st day of May, 2026.

Respectfully Submitted,

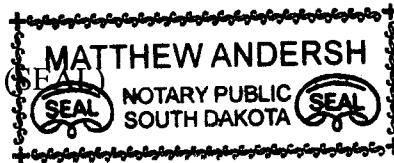
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Pro-Se, An Individual.

Sworn/Affirmed Before me this 21st day of May, 2026.

Matthew Andersh
NOTARY PUBLIC

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CERTIFICATE OF SERVICE:

The undersigned hereby certifies that on the day below, a true and correct copy of Appellant's Reply Brief to Appellee's Brief with Appendix was served/sent by depositing same into the U.S. Postal Service through the Prisons internal Mail System postage prepaid either by me or the institution to:

CC:

Amanda J. Miiller
Deputy Attorney General
1302 East SD Highway 1889, and/or HWY 14, Suite #1
Pierre, SD 57501-8501

Second Judicial Circuit Court
Minnehaha County Clerk
425 N. Dakota Avenue
Sioux Falls, SD 57104-2470

South Dakota Supreme Court
Clerk of the Supreme Court
500 East Capitol Avenue
Pierre, SD 57501-5070

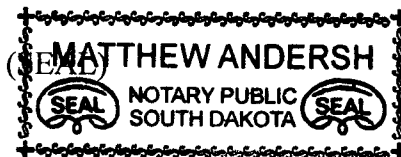
Dated this 21st day of May, 2026.

Respectfully Submitted,
X: Sheldon Dean Schneider
Sheldon Dean Schneider
1412 Wood Street
Springfield, SD 57062-2238
Pro-Se, An Individual.

Sworn/Affirmed Before me this 21st day of May, 2026.

Matthew Andersh
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Sheldon Dean Schneider v. STATE OF SOUTH DAKOTA, et al., 49CIV23-2221/#31197 & #31226

APPENDIX – TABLE OF CONTENTS:

1) Memorandum Opinion (File 49CIV23-2221, Appeal File #31197 & #31226).....	1
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CERTIFICATE OF SERVICE

THIS CERTIFIES I HAVE SERVED THE FOLLOWING ENTITIES,
PERSON(S), AND/OR INDIVIDUAL(S) THE ABOVE-FOREGOING THROUGH FIRST
CLASS PREPAID POSTAGE IN THE U.S. POSTAL SERVICE ON THIS 21st DAY OF
May, 2026.

Enclosed: "Exhibit A-Certificate of Service For Affidavit and Motion
to Reconsider All Motions and Other Documents and Affidavit, Notice and
Motion For Hearing", "Reply Brief", and "Letters"

South Dakota Supreme Court | Second Judicial Circuit | Amanda J. Miller
Clerk of the Supreme Court | Minnehaha County Clerk | Deputy Attorney General
500 East Capitol Avenue | 425 N. Dakota Avenue | 1302 East SD HWY 14, Suite #1
Pierre, SD 57501-5070 | Sioux Falls, SD 57104-2470 | Pierre, SD 57501-8501

Prison Mail Box Rule *Fallen v. United States*, 378 U.S. 139, 84 S.Ct. 1689, 12 L.Ed.2d 760

*Please send me a "Filed" stamped copy of All Enclosed Documents.

*Date Reflected on Certificate of Service is same date deposited into
the Prisons internal Mail System and No Longer in control of the Plaintiff/
Appellant, Therefore, it Must be declared Filed. Thank You.

X: Sheldon Derr Schneider

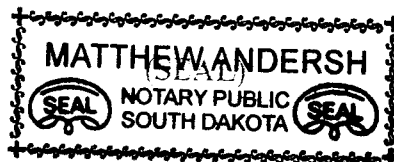
NAME: Sheldon Derr Schneider
1412 Wood Street
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SWORN/AFFIRMED BEFORE ME THIS 21st DAY OF May, 2026.

Matthew Andersh
NOTARY PUBLIC

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CLASS PREPAID POSTAGE IN THE U.S. POSTAL SERVICE ON THIS 30th DAY OF
June, 2025.

Enclosed: "Affidavit For a Change of Judge", "Motion For a Change of
Judge", Proposed "Order Granting Change of Judge", "Affidavit in Support of
Motion to Reconsider All Motions and Other Documents", "Motion to Reconsider
All Motions and Other Documents", Proposed "Order Granting Motion to
Reconsider All Motions and Other Documents", "Affidavit in Support of Motion
and Notice of Hearing", "Motion For Hearing", "Notice of Hearing"

Second Judicial Circuit	! Honorable Judge James Power
Minnehaha County Clerk	! Second Judicial Circuit
425 North Dakota Avenue	! 425 North Dakota Avenue
Sioux Falls, SD 57104-2470	! Sioux Falls, SD 57104

Amanda J. Miller (AG)

1302 E. HWY 14, Suite #1

Pierre, SD 57501-8501

X: Sheldon Dean Schneider

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Pro-Se, An Individual.

SWORN/AFFIRMED BEFORE ME THIS 30th DAY OF June, 2025.

Matthew Andersh
NOTARY PUBLIC

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