

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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No. 31073

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Michael A. Gibson

Appellant,

v.

Greg Gibson, Individually, Joan Gibson, Individually, and Gibson Family Limited Partnership, a South Dakota Limited Partnership; Robert M. Ronayne, and Ronayne Law Office, P.C.

Appellees.

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Appeal from the Circuit Court, Third Circuit  
Codington County, South Dakota

The Honorable Carmen Means  
Circuit Court Judge

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**APPELLANT MICHAEL A. GIBSON'S BRIEF**

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Notice of Appeal filed April 25, 2025

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#### PRELIMINARY STATEMENT

Citations to the record are designated as "CR." Citations to the transcript of the hearing on the Motion to Dismiss are designated as "Tr." while citations to the transcript of the hearing on the Motion for Reconsideration are designated as "MFR Tr." Citations to Appellant's Appendix are designated as "App."

References to "Appellant" or "Mike" mean Appellant Michael A. Gibson. References to "Greg" mean Appellee Greg Gibson, while references to "Joan" mean Appellee Joan Gibson. The "Gibson Appellees" refers collectively to Greg and Joan. References to "GFLP" or the "Partnership" means Appellee Gibson Family Limited Partnership. "Ronayne" refers collectively to Appellees Robert Ronayne and Ronayne Law Office, P.C. Finally, references to the "Appellees" collectively refers to Greg, Joan, GFLP, and Ronayne.

#### JURISDICTIONAL STATEMENT

Mike appeals from the Order and Judgment entered and noticed on March 26, 2025, and the Order Denying Motion for Reconsideration entered April 17, 2025, and noticed on April 23, 2025. The Notice of Appeal was filed on April 25, 2025. On May 15, 2025, the Order and Judgment was amended by the Clerk of Courts to insert costs. The Amended Notice of Appeal was filed on June 13, 2025, to specify that Michael also appeals from the amended Order and Judgment.

#### STATEMENT OF LEGAL ISSUES

**1. The Circuit Court Erred by Failing to Make Sufficient Findings of Fact and Conclusions of Law Before Entering a Judgment of Dismissal under SDCL 15-6-41(b).**

The circuit court erred by failing to make the requisite findings necessary to grant a motion to dismiss for discovery violations, including the alleged discovery conduct, whether the physician-patient privilege was adequately invoked and/or waived, and what provision of Chapter 15-6 was violated and how.

- SDCL 15-6-41(b)
- SDCL 15-6-52(a)
- *Sorenson v. Rickman*, 486 N.W.2d 259, 261 (S.D. 1992)

**2. The Circuit Court Erred by Granting the Gibson Family Limited Partnership's Motion to Dismiss and in Denying Michael Gibson's Motion for Reconsideration.**

The circuit court erred by granting the Motion to Dismiss under SDCL 15-6-41(b) because the subject subpoenas duces tecum for medical records did not violate SDCL Chapter 15-6. The subpoenas were served in compliance SDCL 15-6-45(b), sought information which was relevant or reasonably calculated to lead to admissible evidence, and the physician-patient privilege was waived and not sufficiently invoked.

- SDCL 19-2-3
- *Matter of Estate of Tank*, 2020 S.D. 2, 938 N.W.2d 449
- *Maynard v. Heeren*, 1997 S.D. 60, 563 N.W.2d 830
- *Hollow Horn v. Firstcomp Insurance Company*, 5:17-CV-05016-JLV, 2020 WL 6591306 (D.S.D. May 4, 2020)

Alternatively, the circuit court erred in determining that dismissal was an appropriate sanction for any alleged discovery violations because the evidence applied to the requisite factors require a less severe sanction or no sanction at all.

- SDCL 15-6-41(b)
- *Olson v. Huron Reg'l Med. Ctr., Inc.*, 2025 S.D. 34, -- N.W.2d --
- *Dudley v. Huizenga*, 2003 S.D. 84, 667 N.W.2d 644

#### STATEMENT OF THE CASE

The underlying lawsuit centered around the operations of GFLP and the Gibson Appellees' purchase of GFLP on September 12, 2022 (the "*Disputed Transaction*"). GFLP is owned by Delores Gibson ("*Delores*") and her sons, Mike and Greg. (CR1349). Delores owned 8.4% of GFLP as its general partner, while Mike and Greg each owned 45.8% as limited partners. *Id.* Ronayne, as GFLP's attorney, facilitated the Disputed Transaction.

Mike alleged that the Gibson Appellees exercised undue influence over Delores which influence allowed Greg to covertly control GFLP—without disclosing Delores' declining health to Mike—and to consummate the Disputed Transaction. (CR29-30). Mike sought rescission of the Disputed Transaction and damages for tortious interference with a business expectancy. (CR33-34). Mike also alleged Greg was liable to GFLP for breaches of fiduciary duty for transacting with GFLP for less than fair market value and for usurpation of corporate opportunities, among other allegations of self-dealing. *Id.* Finally, Mike alleged Ronayne was liable for aiding and abetting Greg's breaches of fiduciary duty and for breaching duties he owed to Mike. (CR30-31).

Mike now respectfully requests this Court reverse the circuit court's orders denying Mike's Motion to Reconsider and granting GFLP's Motion to Dismiss for alleged violations of Chapter 15-6 because the subject subpoenas duces tecum for Delores' medical records did not violate Chapter 15-6 because the physician-patient privilege was waived. Alternatively, dismissal was not an appropriate sanction under the factor-based test adopted by this Court. The judgment of dismissal should be dismissed.

## L. FACTUAL BACKGROUND

At all times relevant hereto, Delores had ischemic cardiomyopathy, dementia, and anxiety, among other conditions. (App.00058-00066). According to LeeAnn Swenson (“*LeeAnn*”), Delores’ daughter, Delores suffered a “significant heart attack” in 2018 that left her in the intensive care unit for a “substantial period of time” and resulted in her needing a defibrillator. (App.00061). Subsequently, Delores was isolated to her home in 2020 during the COVID-19 pandemic. *Id.* “[S]he no longer drove and no longer went out in public to get groceries and attend public gatherings.” *Id.*

During this time, discussions began concerning GFLP’s dissolution and disposition of GFLP’s real property, referred to herein as Tracts 1-6. (CR19, 70, 539). These discussions occurred primarily through a combination of attorneys Shawn Nichols (“*Nichols*”), who represented Mike, Roger Damgaard, who represented the Gibson Appellees, Ed Evans (“*Evans*”), who historically represented Delores personally, and Ronayne, who represented GFLP. (CR1643-57).

In early 2020, an appraisal was completed for Tract 5. (CR22-23, 71). On March 9, 2020, Evans e-mailed the Gibson Appellees directly advising he thought “it might be better if [Ronayne] handle[d]” their “potential purchase” of Tract 5 because: (1) “he is the lawyer for [GFLP],” (2) “he obtained the appraisal;” and (3) “if this matter ever ended up in court again, I assume [Delores] would prefer that I be the trial lawyer handling the litigation and [Ronayne] could be the witness[.]” (CR1643-44). Evans also asked, “do you want me to send a letter to [Delores] explaining the situation?” *Id.*

Subsequently, a second appraisal was completed on Tracts 1-6 on September 30, 2020, wherein the valuation for Tract 5 varied from the first appraisal. (CR22-23, 1353). Mike alleged he was not aware of the 2020 appraisals until after they occurred and has

asserted the land was artificially devalued due to irregularities in method of appraisal and because Greg provided inaccurate information to the appraiser. *Id.*; (CR20-22, 1353). Greg had been leasing multiple tracts from GFLP, including Tract 5.

During 2021, Mike and Greg, through Nichols, Evans, and Ronayne, exchanged proposals for the distribution of the six tracts, but they disagreed on valuations due to Mike's objections to using the 2020 appraisals. (CR1645-57). On June 18, 2021, Evans sent an e-mail to the Gibson Appellees and Ronayne summarizing a conversation he had with Nichols concerning Tract 6, writing, in part:

[Mike] should either let Greg have [Tract 6] for the appraised value or he should pay the \$1.6 million. Having said that, it does appear to me that the appraised value of Tract 6 is very conservative. It is not much higher than the assessed value. Our options include:

- Agreeing to sell Tract 6 and distribute the proceeds as a part of the dissolution;
- Have Mike spend the money to obtain his own appraisal; or
- Mutually agree on a third party to place a value on Tract 6 based on submissions by Mike and us.

Greg, if you truly don't care if you own Tract 6, the first option may be the best. The second option is not preferred because Mike will get an inflated appraisal. The third option is less attractive because it places the Issue In the hands of a third party.

As we also discussed, we can attempt to resolve this matter through negotiations. The real issue is how strong your interest is in retaining Tract 6.

(CR1645-46). Ronayne responded, in part, "Great work, Ed. Thanks for doing this. I did think that the risk of litigation would move Mike more than I could. Well done." *Id.*

On June 22, 2021, Evans e-mailed Nichols requesting Mike's "best offer for Tract 6. Delores can then make an informed decision as to the value of the tract as a part of any dissolution." (CR1647). Evans also advised, "[p]lease do not have Mike contact Delores as a part of these negotiations. She and [GFLP] are represented by counsel and all

communications on any issue relating to [GFLP] should be directed to Rob Ronayne or me or both of us." *Id.* Counsel continued negotiations over property distribution through the end of 2021, with Mike requesting a "mutually agreed upon appraiser" on December 13, 2021, but no agreements were reached. (CR1648-57).

"After the concerns about COVID lessened," LeeAnn did not allow Delores to drive because "it was [not] safe for her to do so." (App.00062). LeeAnn and Joan helped "get [Delores] to every function she wanted to go to." *Id.* In or around this time, the Gibson Appellees were also working on documents that would provide Greg and their entity, Champaygn Ranch, with an option to purchase their leased GFLP land. On March 24, 2022, Roger Damgaard e-mailed Ronayne asking about what would happen if GFLP's general partner died or was incapacitated:

If the General Partner dies or is incapacitated, who has the authority to value the real estate for purposes of exercising the option [under the lease]? Right now the General Partner/Lessor has the exclusive right to value the property for purposes of the option. General Partner's personal representative or heirs would have the right to assume the General Partner's partnership interest ... . Am I right? Does the Limited Partnership Agreement change anything? What can be done to protect Greg's (Lessee and optionor) exposure?

(CR756-57). Ronayne responded:

If the general partner is incapacitated or dies the limited partners can elect a new general partner. The p.r. could vote what was the general partnership interest [sic]. But, to elect a new general partner there needs to a 93% super majority. Not a "neat" result in this case. Exercising the option sooner rather than later would protect Greg. Perhaps you would propose the changes you are suggesting in the lease. We need to get that in place.

*Id.* On April 19, 2022, a "Lease and Agreement" prepared by Ronayne was executed by Delores, which document granted Greg and Champaygn Ranch an "exclusive option to purchase" the leased land. (CR1990-97). The purchase price was to be set from an appraisal performed by an appraiser "selected by [GFLP] in its exclusive discretion." *Id.*

During this time, LeeAnn noticed that Delores was “losing weight and that cooking was becoming harder for her.” (App.00062). Approximately two months later, Delores moved into assisted living. *Id.* On July 19, 2022, Delores signed a Power of Attorney naming Greg and LeeAnn as her attorneys-in-fact. (CR1359-60, 2376-77). When Mike visited Delores at assisted living, she told him about how she was having progressive difficulties both seeing and hearing. (CR1902).

Also in July, a third appraisal on Tracts 1-6 was completed which varied widely from the 2020 appraisals. (CR23, 545). In August of 2022, Ronayne informed Mike that Greg wanted to purchase three of the tracts for their newly appraised amount. (CR24, 73). Nichols, Ronayne, and Evans discussed the matter on September 8, 2022. (CR2391). Mike alleged Nichols was told “Delores desired to sell land to Greg,” but that “no deal had be[en] reached” and Mike “understood future dealing would be transparent going forward before any land was sold.” *Id.* Ronayne alleged he and Evans informed Nichols of an “impending land sale.” (CR523, 1354).

On September 21, 2022, Mike offered to purchase the three tracts for \$550,000 more than Greg. (CR24-26, 1354). However, the land was sold to the Gibson Appellees for \$2.95 million on September 12, 2022, which Mike alleges he was unaware of. (CR1661-68). Ronayne drafted the purchase agreement, and the Gibson Appellees paid him for “his closing agent services.” (CR1360). Delores signed the closing documents while infected with COVID-19, according to Joan. (CR2387). Ronayne notarized her signature remotely. (CR1662, 1664). Mike did not receive these documents until October 28, 2022. (CR25, 521).

In May of 2023, Delores “fell and broke her hip,” necessitating surgery, a four-day hospital stay, and inpatient rehabilitation. (App.00062). After recovering, Delores

switched rooms at assisted living to be “closer to activities” because “the walk for her was too long.” *Id.* Delores also “needed more care and assistance with her daily activities.” *Id.* “She would have trouble remembering where her room was and became more agitated easier. She began to have issues with the staff and became very irritable. She expressed to [LeeAnn] that she was scared to be alone and developed trust issues.” *Id.* Delores’ dementia “progressed considerably” by September of 2023, and she moved to a memory care unit in October. *Id.* Once there, Delores “became more agitated and did not know where she was. She was frightened, confused and wanted to leave.” *Id.* She was prescribed with an anti-psychotic medication at that time. *Id.*

Discussions concerning GFLP’s dissolution continued during 2023. On September 28, 2023, Evans sent Nichols a proposed distribution of GFLP’s remaining assets prepared by Schwan Financial Group (“*SFG*”), and subsequently advised that if he did not hear anything by October 12, 2023, “we will commence planning for a distribution of the assets on the December 31, 2023 termination date.” (CR1687-88). On October 5, 2023, Nichols requested additional information, including GFLP’s bank and financial statements, and indicated that he thought GFLP’s termination date was later than December 31, 2023. (CR1686). Ultimately, no agreement was reached, and Mike commenced this lawsuit on November 27, 2023. (CR2).

Between January of 2024 and August of 2024, LeeAnn noticed a “significant” decline in Delores’ health:

She no longer dresses herself. She cannot use a phone, operate the TV, brush her teeth, or put in her hearing aids. She also experiences incontinence issues. There are times that mom does not recognize where she is and there have been a few times where she does not recognize my husband.

(App.00064). On May 15, 2024, Delores signed a “Delegation of Authority by General Partner,” which delegated her authority in GFLP to LeeAnn and retained Evans, Haigh & Amdt to represent GFLP in this lawsuit. *Id.* (CR717). Delores passed away on May 1, 2025, after the Notice of Appeal was filed.

#### **B. PROCEDURAL HISTORY**

At the trial court level, Mike was represented by Grant Alvine (“*Alvine*”) and *Pro Hac Vice* attorney Paul Sortland (“*Sortland*”). (CR83-87). Early motions to dismiss from Ronayne, (CR43), and the Gibson Appellees, (CR60), and Mike’s Application to Appoint a Receiver for GFLP, (CR128), were denied by the Honorable Carmen Means on March 26, 2024, (CR512-13, 674). After Delores signed the Delegation of Authority, GFLP filed its Answer on May 20, 2024. (CR536-49).

On May 7, 2024, Sortland e-mailed Alvine copies of draft subpoenas seeking financial and property records from nine parties, one of which was SFG. (App.00051-00052). Sortland asked Alvine “to review [the subpoenas], and if appropriate, serve them through the file system to opposing counsel.” *Id.* Alvine advised, “[o]nce served we will file [the subpoenas] and serve opposing counsel in sufficient time so they can file any motion to quash.” (App.00053). The subpoenas were served between May 13-20, 2024. (CR589-597). The deadline for compliance was June 1, 2024. (CR551-587).

On May 29, 2024, SFG’s attorney called Alvine about the subpoena and followed up with an e-mail providing, in part: “SDCL 15-6-45(B) has a pre-service requirement . . . I understand that this was not done, and that you will now be doing it. Send us a copy and then a new subpoena with an admission of service and I will have it signed for you.” (App.00054-00055). Alvine sent an e-mail to Sortland about this, writing, in part:

pursuant to SDCL 15-6-45(b) we are now required to send a Notice and copy of the Subpoena to all opposing parties before we send out the subpoena Duces Tecum. Since we have already received numerous Admissions of Service I was going to send an email out to the parties that I-not you-did not comply with 15-6-45(b) and if they want I can send out a Notice with Subpoena and reserve all the Subpoena's with Admission of Service again. However if they are not going to be moving to Quash the subpoena it seems meaningless to do. If the parties waive that we can just proceed ahead. If they don't I will take care of remedying my mistake. I apologize for this and will inform the parties my habits are hard to break.

(App.00056). The subpoenas and their returns of service were filed on May 30, 2024. (CR550-597). Mike's attorneys also learned the subpoenas were missing statutorily required text. These issues were rectified upon counsel learning of the same and all subsequent subpoenas did not have the same issues. (CR758, 777-90, 791-818, 947-50, 957-63, 1157-1226).

On July 1, 2024, GFLP moved to quash the May 2024 subpoenas or, alternatively, that the SFG subpoena "be quashed in part to prohibit production of [Delores'] personal financial and health records." (CR602). Additionally, GFLP requested a protective order prohibiting "discovery of [Delores'] personal financial and medical records." *Id.* GFLP did not set the motion for a hearing. (CR1227).

On August 9, 2024, Mike's attorneys filed a Notice of Deposition for Delores. (CR695-98). On August 23, 2024, Delores "fell again and broke her shoulder." (App.00064). The same day, Evans sent a letter from Delores' doctor, Dr. Sarah Reiffenberger, "regarding the health risk of her being deposed" to Sortland and asked whether he still intended to depose her. (App.00057). The next day, GFLP filed a Motion for Protective Order, along with Dr. Reiffenberger's letter, a letter from Lee Hendricks, PsyD, and LeeAnn's affidavit, which discussed Delores' dementia, ischemic cardiomyopathy, and anxiety, amongst other information. (CR699); (App.00058-00067).

GFLP filed a Notice of Hearing on September 16, 2024, but the motion was never heard because Mike did not further pursue Delores' deposition after that time. (CR735).

On September 19, 2024, Mike's attorneys filed Notices of Depositions for Dr. Reiffenberger and Dr. Hendricks for October 21, 2024, which both contained instructions for the deponents to bring all documents "relied upon in rendering [their] opinions regarding Delores" in their above-mentioned letters. (CR737-45). Mike's attorneys filed a subpoena for Dr. Reiffenberger on October 15, 2024, requesting the same information as Schedule A. (CR758-61). Depositions, however, were later rescheduled to November 19-20, 2024, and Dr. Reiffenberger's deposition was ultimately never taken.

On November 15, 2024, Mike's attorneys filed subpoenas for Dr. Reiffenberger, Dr. Hendricks, Sanford Health, and Prairie Lakes Hospital and two of its clinics (collectively, "PLHS") requesting Delores' medical records from 2018 to 2024. (App.00017-00040). Dr. Hendricks and Dr. Reiffenberger's compliance deadline was the date of their depositions, while the others were December 6, 2024. *Id.* These subpoenas were served on November 18, 2024. (App.00045-00050). On the same day, GFLP filed a Motion to Quash, requested a protective order, and informed Dr. Hendricks of its motions. (CR819); (App.00070).

Dr. Hendricks was deposed on November 19, 2024, during which he would only testify about the letter he authored for GFLP. (CR2444-62). Afterwards, Sortland e-mailed Evans asking about a protective order for Delores' medical records, explaining:

I think it's obvious that her history of treatment for dementia is at issue in this case. However, because most anything, particularly matters such as falls and serious treatments such as the MRI suffered by [Delores], can also exacerbate dementia, that we should be entitled to see all the medical records for the time period, 2018 to present.

(App.00072). Evans responded, “I will visit with LeAnn and Delores and propose sometime [sic]. But I will not be able to do so until next week. Do you want to postpone depo of Dr. Reiffenberger until I propose something?” *Id.* Sortland agreed; however, Evans never further communicated about the matter. *Id.* On December 2, 2024, Sortland sent all defense counsel a proposed “stipulation for use of evidence obtained from medical records of [Delores]” and draft Second Amended Complaint to inquire about stipulating for leave to amend. (App.00075-00079). Defense counsel did sign the stipulation or otherwise propose an alternative solution. *Id.*

Meanwhile, Jodi LeBlanc, a Health Information Specialist for PLHS, had sent the November 15, 2024, subpoena to PLHS’s Director of Quality Risk Management, Chief Nursing Officer, and Director of Health Information Management “for review and authorization to process and release requested records.” (App.00084). “Once [LeBlanc] received authorization, [she] prepared the medical records and bills that were requested in the subpoena.” *Id.* On December 2, 2024, LeBlanc called Sortland’s office to ask about sending the records through Dropbox. *Id.* She spoke with Sortland’s secretary who sent LeBlanc an e-mail at 4:42pm stating: “please find a Dropbox link which you can click on and copy and paste the materials into the Dropbox file. Let me know if you have any issue placing materials into the Dropbox link.” (App.00091). LeBlanc respond at 4:44pm, “Thank you! Received. I will work on dropping the information tomorrow and I will email you once complete[.]” *Id.*

LeBlanc subsequently discussed alternative methods for sending the records with Sortland’s secretary after she was unable to upload the records to DropBox. (App.00091). LeBlanc alleged Sortland’s secretary “informed [her] that all parties would have access to the records because they were working together” during these discussions. *Id.* PLHS

sent the medical records to Sortland's secretary on December 3, 2024, via secure link. (App.00092-00093). LeBlanc alleged she relied on Sortland to "provide requests approved by judicial processes" and no one "informed[ed] [her] that anyone had objected[.]" (App.00084-00085). Sortland never communicated with LeBlanc and averred that he did not believe his secretary "did anything other than comply with Ms. LeBlanc's requests." (App.00089).

On December 26, 2024, Sortland sent the PLHS medical records to defense counsel and a copy of a Motion to Amend and Second Amended Complaint, writing: "[p]lease let me know if you will all consent to the Second Amended Complaint . . . If we do not reach an agreement, I will need to schedule a motion." (App.00080-00082). Sortland did not receive a response. (CR887). The Motion to Amend was filed on January 3, 2025. (CR857-83).

On January 6, 2025, Mike's attorneys filed a subpoena requesting Delores' medical records from 2018 to 2024 from Dr. Hendricks. (App.00041-00044). The subpoena was served on January 8, 2025, and the deadline for compliance was January 14, 2025. (App.00072). GFLP's attorneys e-mailed Dr. Hendricks the same day indicating their intent to object. *Id.* ("I am bringing this to your attention . . . to ensure that no records are produced until the Court has had an opportunity to rule on the pending (and forthcoming)" motions). On January 10, 2025, GFLP filed a Motion to Quash, requested a protective order, and filed a notice of hearing for this motion. (CR951-53).

On January 17, 2025, GFLP filed a Motion to Dismiss pursuant to SDCL 15-6-41(b) for alleged discovery violations. (CR964). Boiled down, the motion claimed Sortland violated either SDCL 15-6-45(b), HIPAA, the physician-patient privilege, and/or the Rules of Professional Conduct by: (1) serving subpoenas for medical records; (2)

receiving the PLHS medical records; and (3) not providing advance notice of the May 2024 subpoenas for financial/business records. (CR975). On January 24, 2025, GFLP filed a Notice of Hearing for this Motion and its Motion(s) to Quash and for Protective Order(s) filed on July 1, 2024, and November 18, 2024. (App.00094-00096). Various "joinders" in the Motion to Dismiss and Motion(s) to Quash were filed. (CR1232, 1337-42, 1520). On February 25, 2025, the Gibson Appellees filed a Motion to Quash certain subpoenas seeking financial/business records. (CR1337).

On February 25, 2025, Mike's attorneys filed a Motion to Disqualify GFLP's counsel due to Evans' representation of Delores and personal knowledge of the Disputed Transaction, (CR2389-90), and a Motion for SFG to Disgorge Fees and Expenses Paid in relation to the subpoena production. (CR1519, 1529-38)

In total, the following motions were noticed to be heard by Judge Means on March 11, 2025:

- (1) GFLP's Motion to Quash and for Protective Order (07/01/2024);
- (2) GFLP's Motion to Quash and for Protective Order (11/18/2024);
- (3) Mike's Motion to Amend Pleadings (01/03/2025);
- (4) GFLP's Motion to Dismiss (01/17/2025);
- (5) SFG's Joinder in Motion for Discovery Relief (02/18/2025);
- (6) Mike's Motion to Disqualify (02/25/2025);
- (7) Mike's Motion to Disgorge (02/25/2025); and
- (8) The Gibson Appellees' Motion to Quash (02/25/2025).

At the hearing, the circuit court only considered GFLP's Motion to Dismiss, which it granted, and denied all other motions as moot. (App.00001-00003). The circuit court did not enter written findings, and the verbal ruling did not particularize the conduct at issue or the law violated. Tr. 27-28. However, it appeared the legal conclusions were relegated to the physician-patient privilege:

while I hear what you're saying that you think you've got a great case, I look at this case as you blatantly and in bad faith disregarded the rules that are in

place and the statutes that are in place to protect privileged and private medical records and that after you did so you did take a no harm no foul approach to it. Doesn't matter that they objected, I just assumed everything was okay and I got these records anyway.

Tr. 27:6-13. As it pertains to the sanction, the circuit court concluded Sortland would continue to "abuse the rules" without dismissal:

When I listen to your response and I listen to the abuse of discovery that has occurred here I can't think of any way to be assured that you aren't going to engage in this kind of conduct again other than to dismiss this case because you have no remorse for what you did, the fact that you apologized to me here in open court means nothing to me. You would do this again in a heartbeat. Your manner here in the courtroom, the words that you used in your submissions all lead me to believe that if you are given the opportunity to abuse the rules again you will and you will say that it is just because you want to advocate for your client and you lost sight of everything else.

Tr. 27:14-24. Additionally, the circuit court found depriving Mike of his day in court was outweighed by previous litigation between the parties:

I am very loathed to dismiss actions and to strip parties of their right to have things litigated because of errors by their counsel, but when I weigh that risk against the idea that there have already been previous litigations with this family and with these exact same people, I have less of a concern that I am stripping [Mike] of some inherent right that he has to move this case forward.

Tr. 28:3-15. The Notice of Entry of Order and Judgment was filed on March 26, 2025. (CR2427).

On April 2, 2025, attorney Mark Welter filed a Motion for Reconsideration on Mike's behalf. (CR2443-44). At the hearing on April 15, 2025, the circuit court noted it believed Mike was somehow behind Sortland's alleged procedural errors:

even though I didn't make a finding about this, I was struck in the pleadings by Mr. Sortland's very odd world view that if you aren't with [Mike] you must be with Greg Gibson or against [Mike] . . . Now, I don't know where Mr. Sortland would get the basis to make a submission like that, but the only basis I can think of unless Mr. Sortland suffers from some sort of mental illness, is that he gets that from his client[.]

MFR Tr. 23:5-19. The court further stated:

I said that lawyers need to stand as a gatekeeper against overzealous clients and I can't find any other basis for why Mr. Sortland would have this world view than he got it from his client and he was not being that gatekeeper and so he was doing what his client wanted without saying to himself or to anyone else maybe I should take a breath here and maybe I shouldn't just ignore the idea that the Court needs to act on a motion to quash. To me, all of that had to come from [Mike] unless you have some other basis for why you think Mr. Sortland was behaving the way he was.

MFR Tr. 24:10-19. Welter disagreed: "I don't think that came from the client . . . strategy matters are really for the attorney not the client and, you know, [Mike] didn't write the brief and didn't come argue this[.]" MFR Tr. 24:20-6. The court verbally denied the motion and Notice of Entry of Order was filed on April 23, 2025. (CR2568).

Mike timely filed his Notice of Appeal on April 25, 2025. Subsequently, Sortland, withdrew on May 9, 2025, and Alvine filed a Motion to Withdraw on July 18, 2025. (App.00102-00103).

#### ARGUMENT

##### **I. THE CIRCUIT COURT ERRED BY FAILING TO ENTER REQUISITE FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

SDCL 15-6-41(b) provides a circuit court with the "power to grant a motion to dismiss a pleading when the pleader has failed to comply with the rules of civil procedure (SDCL ch. 15-6), or failed to comply with any order of the circuit court." *S.W. Croes Family Tr. v. Small Bus. Admin.*, 446 N.W.2d 55, 57 (S.D. 1989). The court's findings of fact are reviewed under the "clearly erroneous" standard and "[t]he conclusions of law are reviewed under the usual 'in error as a matter of law.'" *Wefel v. Harold J. Westin & Associates, Inc.*, 329 N.W.2d 624, 626 (S.D. 1983) (internal citation omitted).

In entering a judgment under Rule 41(b), the court is required to enter findings and conclusions in accordance with SDCL 15-6-52(a), which states, in part:

the court shall, unless waived as provided in § 15-6-52(b), find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to § 15-6-58 . . . It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence, or appear in an opinion or memorandum of decision filed by the court. Alternatively, the court may direct counsel for the prevailing party to prepare findings[.]

On a motion to dismiss for violations of Chapter 15-6, the court would, at a minimum, need to make findings concerning the conduct giving rise to the motion, whether such conduct violated Chapter 15-6, and whether dismissal is an appropriate sanction. *See S.W. Croes Family*, 446 N.W.2d at 57 (explaining Rule 41(b) gives the court “power to grant a motion to dismiss a pleading when the pleader has failed to comply with the rules of civil procedure”); *Dudley v. Hutzenga*, 2003 S.D. 84, ¶ 15, 667 N.W.2d 644, 649 (identifying factors for determining the appropriate sanction).

Here, the circuit court did not enter written findings before entering the judgment, but relied on its verbal ruling given at the conclusion of the hearing. As to the threshold question of whether Chapter 15-6 was violated, the court did not “specially” find any facts, but conclusively stated Sortland “blatantly and in bad faith disregarded the rules that are in place and the statutes are in place to protect privileged and private medical records[.]” Tr. 26:24-28:15. This statement assumes the requested medical records were protected from disclosure by the physician-patient privilege, but the court did not specially make any findings concerning those records nor apply such findings to the law. In fact, the circuit court denied the relevant motion(s) to quash as moot and did not review any of the records. *See State v. Karlen*, 1999 S.D. 12, ¶ 46, 589 N.W.2d 594, 605 (holding defendant was entitled to in camera review of witness’ counseling records because there was a “reasonable probability that the records may contain material evidence”).

Even assuming, *arguendo*, the physician-patient privilege applied, the circuit court did not make any findings as to how and what provision of Chapter 15-6 was violated. Was it the act of simply serving the subpoenas, the act of receiving records, or both? This Court has “held on numerous occasions that it is the trial court’s duty to make required findings of fact, and that failure to do so constitutes reversible error.” *Sorenson v. Rickman*, 486 N.W.2d 259, 261 (S.D. 1992) (citing *Heikkila v. Carver*, 416 N.W.2d 591 (S.D. 1987)) (citations omitted). Because the circuit court’s verbal ruling is insufficient to support the dismissal of this lawsuit, this Court should vacate the judgment and remand for further proceedings.

## **II. THE CIRCUIT COURT ERRED BY GRANTING THE MOTION TO DISMISS BECAUSE THE SUBPOENAS FOR MEDICAL RECORDS DID NOT VIOLATE CHAPTER 15-6.**

Before the circuit court could determine dismissal was an appropriate sanction under Rule 41(b), it had to first determine that Chapter 15-6 was violated. *See SDCL 15-6-41(b)*. GFLP alleged SDCL 15-6-45(b) was violated because the subpoenas sought medical records that GFLP claimed were protected from disclosure by the physician-patient privilege or HIPAA and because PLHS produced records to Sortland’s office after GFLP filed an objection. (CR977-75).<sup>1</sup> The circuit court’s determination a privilege applied, and that “statutes” and “rules” were violated are conclusions of law reviewed de novo. *See Wefel*, 329 N.W.2d at 626.

“[A] party seeking to modify or quash such a subpoena has the burden of proving the necessity of doing so.” *Phipps Bros. Inc. v. Nelson’s Oil & Gas, Inc.*, 508 N.W.2d 885 (S.D. 1993). Rule 45(b) provides, in pertinent part:

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<sup>1</sup> GFLP also claimed Sortland violated the Rules of Professional Conduct, but the circuit court did not enter any findings on the issue. *See* Tr. 27:6-28:15.

A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein . . . . Before a subpoena commanding the production of documentary evidence is served on the person to whom it is directed, a notice and copy of the subpoena must be served on each party to the matter pending. The court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

- (1) Quash or modify the subpoena if it is unreasonable and oppressive; or
- (2) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

Furthermore, "the scope of discovery is broad under SDCL 15-6-26(b)." *Matter of Estate of Jones*, 2022 S.D. 9, ¶ 26, 970 N.W.2d 520, 529. It includes "discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action[.]" SDCL 15-6-26(b). "The physician-patient privilege, codified in SDCL 19-19-503(b), protects a physician-patient's 'confidential communications made for the purpose of diagnosis or treatment.'" *Wipf v. Altstiel*, 2016 S.D. 97, ¶ 7, 888 N.W.2d 790, 792. Among other exceptions, the privilege is waived for purposes of discovery "when the physical or mental health of any person is in issue" in a civil action. SDCL 19-2-3. This waiver is "narrow in scope, closely tailored to the time period or subject matter of the claim." *Id.*

The circuit court erred by granting the Motion to Dismiss under Rule 41(b) because Mike's counsel did not violate Rule 45(b), and the physician-patient privilege was waived under SDCL 19-2-3 because Delores' physical and mental health was at issue. Therefore, Mike respectfully requests this Court vacate the judgment of dismissal and remand for further proceedings.

**A. The Subpoenas for Medical Records were Served in Compliance with Rule 45(b).**

Rule 45(b) requires subpoenas be served on the parties to the lawsuit before they are served on intended recipients. Mike's attorneys satisfied this requirement for all of the subpoenas that requested medical records.<sup>2</sup> The subject subpoenas were filed on November 15, 2024, (App.00017-00040), which filings constituted service on the parties to the litigation. *See SDCL 15-6-5(b)(2)* ("all documents filed with the court electronically . . . are presumed served upon all attorneys of record"). The subpoenas were not served on the healthcare providers until three days later on November 18, 2024. (App.00045-00050). GFLP filed its Motion to Quash on the same day, prior to the deadlines for compliance. (CR819-854). Accordingly, the subpoenas satisfied Rule 45(b)'s pre-service requirement.

Rule 45(b) was also not violated simply because the subpoenas sought medical records. Such information was relevant or reasonably calculated to lead to the discovery of admissible evidence. *See SDCL 15-6-26(b)*. In the lawsuit, Mike alleged the Gibson Appellees covertly controlled GFLP's operations in and around 2019 to 2024 and consummated the Disputed Transaction in 2022 by unduly influencing Delores. (CR28-34). The first element of undue influence is susceptibility, which may be, and usually is, satisfied through medical evidence. *Matter of Estate of Tank*, 2020 S.D. 2, ¶¶ 37-38, 938 N.W.2d 449, 460 (referencing doctor's opinion that decedent's "dementia would have

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<sup>2</sup> Mike's counsel conceded the first set of subpoenas, which did not seek medical records, served in the case did not comply with the pre-service requirement and statutorily required text was inadvertently omitted. Tr. 24:10. Both mistakes were rectified once counsel learned of it. *Id.* These issues, however, did not serve as the basis for the dismissal, which concerned "statutes" and "rules" that "protect privileged and private medical records." Tr. 27:6-13.

made him more susceptible to manipulation and influence by others"). For example, this Court has previously found that a question of fact existed on susceptibility because the decedent had dementia. *Id.* It was GFLP who offered evidence concerning Delores' dementia and related symptoms, along with several other major health or life events that occurred between 2018 through 2024, including a heart attack, anxiety, several falls, hospitalizations, surgeries, prolonged isolation during the pandemic, no longer driving, moving into assisted living, and transitioning to a memory care unit. The subpoenas sought production of medical records for the same timeframe.

Not only was the discovery relevant, but the physician-patient privilege was waived under SDCL 19-2-3 because Delores' "physical or mental health [was] at issue," as set forth above. *See Tank*, 2020 S.D. 2, ¶¶ 37-38, 938 N.W.2d at 460. In fact, other courts have held the privilege is waived for the medical records that are relevant to the undue influence claim because it "typically require[s] medical or mental condition evidence." *In re Estate of Ashworth*, 549 P.3d 1003, 1007 (Colo. 2024); *see also Lembke v. Unke*, 171 N.W.2d 837, 847 (N.D. 1969) (holding that "justice will be more apt to result from" a waiver of the physician-patient privilege by the decedent's heirs "because it will aid in reaching the truth as to the existence of testamentary capacity"). Furthermore, the subpoenas were compliant with the scope of the waiver because the request for medical records from 2018 to 2024 is closely tailored to the time period and nature of both Mike's allegations and Delores' physical and mental ailments giving rise to the same. Therefore, the medical records were discoverable pursuant to SDCL 15-6-26(b).

Even assuming, *arguendo*, there was no waiver, the foregoing facts and law demonstrate Sortland had a good faith basis for believing it was when the subpoenas were

served. Simply serving a subpoena for information that is then subsequently determined to be privileged should not be considered a violation of Chapter 15-6. Otherwise, motions to quash will automatically expose attorneys and their clients to sanctions as extreme as dismissal regardless of whether they had a good faith, non-frivolous basis to believe that the discovery was not privileged. This is not the reality reflected by this Court's precedent. *See Karlen*, 1999 S.D. 12, ¶ 46, 589 N.W.2d at 605 (reversing order quashing a subpoena for counseling records and remanding for in camera review). Such a rule would cause a chilling effect on discovery's purpose to "obtain evidence for use at trial [and] secure information that may lead to admissible evidence at trial." *Kaarup v. St. Paul Fire & Marine Ins.*, 436 N.W.2d 17, 19 (S.D. 1989).

#### **B. PLHS's Production of Medical Records Did Not Violate Chapter 15-6.**

Mike's counsel's receipt of medical records from PLHS did not violate Rule 45(b) either. As set forth above, the physician-patient privilege was waived. This Court has explained that such waiver "gives the party seeking disclosure an *absolute right* of access to the privileged material," subject only to reasonable restrictions aimed to prevent disclosure of irrelevant information. *Maynard v. Heeren*, 1997 S.D. 60, ¶ 15, 563 N.W.2d 830, 835 (emphasis added). Of course, reasonable restrictions are only placed on discovery when an objection is properly brought before the court. When that occurs, the court must "conduct an in camera review of the privileged communication to determine whether the communication is discoverable." SDCL 19-2-3. Here, GFLP not only failed to properly bring its objection before the circuit court prior to the subpoenas' deadline for compliance, but the court seemingly determined all of the medical records were not discoverable without reviewing them in the first instance.

As an initial matter, GFLP did not have standing to object to the subpoenas or to

invoke the physician-patient privilege. “In general, standing is established by being a ‘real party in interest’ and ‘determined by the status of the party seeking relief.’” *State v. Rolfe*, 2013 S.D. 2, ¶ 29, 825 N.W.2d 901, 909 (quoting *Arnoldy v. Mahoney*, 2010 S.D. 89, ¶¶ 18–19, 791 N.W.2d 645, 653). “The real party in interest requirement for standing is satisfied if the litigant can show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the [other party].” *Id.* (citation omitted). While this Court has not considered this exact issue, the district court for the district of South Dakota has.

In *Hollow Horn v. Firstcomp Insurance Company*, the district court determined the plaintiff did not have standing to challenge subpoenas requesting production of her adult children’s medical records. 5:17-CV-05016-JLV, 2020 WL 6591306, at \*2 (D.S.D. May 4, 2020). “Generally, a party to a lawsuit does not have standing to seek to quash a subpoena directed to a non-party—that power lies with the non-party.” *Id.* (citing *Colonial Funding Network, Inc. v. Genuine Builders, Inc.*, 326 F.R.D. 206, 212 (D.S.D. 2018)) (citations omitted). “However, when the party seeking to challenge the subpoena has a *personal right or privilege* in the subpoena, an exception has been made.” *Id.* (quoting *Williams Dev. & Constr., Inc.*, No. 4:18-CV-04033-LLP, 2019 WL 6716786, at \*3 (D.S.D. Dec. 10, 2019)) (emphasis in original). Applying these rules, the district court explained:

it is clear that Plaintiff is attempting to assert the rights of non-parties to the lawsuit, i.e. the medical facilities that are the recipients of the subpoenas and his adult children. Plaintiff does not have standing to move this court to quash or modify the subpoenas because he has not asserted a *personal right or privilege* in the subpoenas.

*Id.* (emphasis in original). The court further noted the plaintiff lacked standing to argue that “the subpoenas seek privileged material of his adult children pursuant to South

Dakota's patient-physician privilege . . . It is not enough for Plaintiff to assert a third-party's privilege, rather he only possesses standing to assert a *personal* right or privilege."

*Id.* (emphasis in original).

*Hollow Horn* is consistent with the fact that South Dakota's physician-patient privilege may only be claimed by "the patient, [her] guardian or conservator, [] the personal representative of a deceased patient," or the physician "at the time of the communication." SDCL 19-19-503(c). GFLP could not stand in the patient's shoes to assert the privilege because it is an entity with a legal existence separate from its partners, including Delores. *See, e.g., Brevet Int'l, Inc. v. Great Plains Luggage Co.*, 2000 S.D. 5, ¶ 25, 604 N.W.2d 268, 273 ("a corporation is to be considered a legal entity separate and distinct from its shareholders, officers and directors"). Therefore, GFLP's objections to the subpoenas were improper.

Even assuming, *arguendo*, GFLP had standing, it did not properly bring its objection before the Court prior to PLHS's deadline for compliance. GFLP filed its Motion to Quash on November 18, 2024, and knew PLHS was required to comply with the subpoena on or before December 6, 2024. However, GFLP did not attempt to negotiate a stipulated protective order, despite two requests from Sortland to do so, and made no attempt to set a hearing for its Motion(s) to Quash until January of 2025. (App.00094-00096). It is well known the circuit courts generally do not set hearings nor take action on any motions without a hearing. Indeed, SDCL 15-6-6(d) places that obligation on the movant: "[a] written motion . . . ***and notice of the hearing thereof*** . . . shall be served not later than ten days before the time specified for the hearing[.]"

(Emphasis added). Furthermore, countless courts have made it clear that filing motions

to quash or for protective orders do not stay or limit discovery.<sup>3</sup> Any other rule “would be an intolerable clog upon the discovery process.” *Pioche*, 333 F.2d at 269. In fact, most of the courts considering the issue were sanctioning the party that filed the motion to quash for not complying with discovery, *not* the party that served the subpoena. See *supra* FN 3.

GFLP also only ever asserted general objections to the subpoenas. However, this Court requires “specific objections to specific portions of the file” because “[g]eneral objections to the entire file or large portions of it are not appropriate to allow the trial court to perform its required task of analyzing a specific objection to a specific document.” *Maynard*, 1997 S.D. 60, ¶ 15, 563 N.W.2d at 834 n. 8. Despite this, the circuit court determined that *all* of the discovery was protected by the physician-patient

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<sup>3</sup> See, e.g., *Barnes v. Madison*, 79 Fed.Appx. 691, 707 (5th Cir. 2003) (upholding sanctions for failing to attend a deposition because “the mere act of filing a motion for a protective order does not relieve a party of the duty to appear; the party is obliged to appear until some order of the court excuses attendance.”); *Hepperle v. Johnston*, 590 F.2d 609, 613 (5th Cir. 1979) (“The court’s inaction on appellant’s motion to postpone the taking of his deposition . . . did not relieve him of the duty to appear for his deposition”); *Pioche Mines Consol., Inc. v. Dolman*, 333 F.2d 257, 269 (9th Cir. 1964) (“it is for the court, not the deponent or his counsel, to relieve him of the duty to appear.”); *F.A.A. v. Landy*, 705 F.2d 624, 634 (2d Cir. 1983) (“it is not the filing of such a motion that stays the deposition, but rather a court order.”); *Stephen L. LaFrance Holdings, Inc. v. Sorensen*, 278 F.R.D. 429, 436 (E.D.Ark. 2011) (“the filing of a motion to quash does not automatically stay a deposition.”); *Hill v. Dejoy*, No. 4:19-CV-1315 RLW, 2020 WL 7078842, at \*2 (E.D.Mo. Dec. 3, 2020) (“Although Plaintiff had filed a motion to quash the deposition, the Court had not ruled on the motion, and if properly noticed, Plaintiff was obligated to sit for deposition”); *Am. Health Sys., Inc. v. Liberty Health Sys.*, No. CIV. A. 90-3112, 1991 WL 4405, at \*3 (E.D.Pa. Jan. 15, 1991) (“counsel should have known that the filing of a Motion to Quash or a Motion for Protective Order does not automatically operate to stay a deposition or other discovery.” (emphasis in original)); *Concepts NREC, LLC v. Qiu*, No. 5:20-CV-133, 2021 WL 6750964, at \*5 (D.Vt. Sept. 20, 2021) (“a motion for a protective order does not stay a deposition.”); *Wieneke v. Chalmers*, 385 P.2d 65, 69 (N.M. 1963) (“In passing we would point out that a motion to quash the taking of a deposition or for protective orders. . . do not have the effect of automatically accomplishing what is sought therein.”).

privilege without reviewing the discovery in the first instance. Yet, the requirement to conduct an in camera review under SDCL 19-2-3 is not permissive, but mandatory. SDCL 19-2-3 (“the court *shall* conduct an in camera review of the privileged communication” (emphasis added)). Thus, even assuming GFLP had standing and was not required to bring its motion on for a hearing, the circuit court still could not determine that some, let alone all, of the medical records were protected from disclosure.

The circuit court’s conclusion that laws and statutes protecting privileged medical records were violated was erroneous. Consistent with the foregoing, this Court should vacate the judgment and remand for further proceedings.

**C. Alleged Violations of HIPAA are Not a Basis for Dismissal under Rule 41(b).**

Whether the circuit court relied on HIPAA as a basis for dismissal under Rule 41(b) is not entirely clear from its ruling. To the extent it did, this was error.

First, the circuit court only acquires discretion to dismiss under Rule 41(b) for failures to “comply with [Chapter 15-6] or any order of the court.” SDCL 15-6-41(b). HIPAA consists of federal regulations that do not fall into either category.

Second, HIPAA only applies to “covered entities,” such as PLHS, not “private litigants,” such as Mike or his attorneys. *Borella v. Black Hills Surgical Hosp. L.L.P.*, No. 5:24-CV-05079-KES, 2025 WL 1928074, at \*5 (D.S.D. July 14, 2025). To that end, LeBlanc’s affidavit indicated that if anyone did not comply with HIPAA, it was PLHS. LeBlanc confirmed she followed her “standard practice” at PLHS when producing Delores’ medical records, which was to release the records once she had authorization from her superiors. (App.00084). PLHS did, in fact, authorize LeBlanc to release the records before she ever contacted Sortland’s office. *Id.* (“Once I received authorization, I

prepared the medical records and bills that were requested in the subpoena.”). Then, LeBlanc spoke to Sortland’s secretary, not Sortland or any other lawyer, to get a DropBox link so PLHS could provide the records. *Id.* (“Ms. Nick emailed me a Dropbox link to place the medical records.”). She did not reach out to Sortland’s office to seek further assurances before providing the records. Indeed, LeBlanc admitted she had *already* tried to upload the records to the DropBox *before* Sortland’s secretary allegedly stated the parties “were working together.” *Id.* (“However, I could not get the link to work properly. I exchanged multiple correspondence with Ms. Nick to try to determine an alternative method of producing the requested medical records . . . During our discussions, Ms. Nick informed me that all parties would have access to the records because they were working together.”).

Finally, HIPAA cannot serve as a basis for sanctions because it does “not create a private right of action, though it was enacted in part to protect an individual’s privacy right in their medical records.” *See, e.g., Borella*, 2025 WL 1928074, at \*5 (citing *Dodd v. Jones*, 623 F.3d 563, 569 (8th Cir. 2010)) (citations omitted). Accordingly, GFLP also did not have standing to request sanctions based on HIPAA. *See Conway v. Correctional Medical Services*, No. 2:10-CV-00010-JTK, 2011 WL 4102113 (E.D.Ark. Sept. 14, 2011) (finding that plaintiff “did not have standing in which to assert a legal claim or motion” for sanctions based on an alleged HIPAA violation by defendants because “Congress did not intend for private enforcement of HIPAA”); *see also Keith v. Summers*, No. 4:24-CV-04077-LLP, 2025 WL 267049, at \*6 (D.S.D. Jan. 21, 2025) (“Since HIPAA does not create a private right, it cannot be privately enforced either via § 1983 or through an implied right of action.”). This Court should vacate the judgment of dismissal and remand for further proceedings.

**III. ALTERNATIVELY, THE CIRCUIT COURT ERRED BY GRANTING THE MOTION TO DISMISS AND DENYING THE MOTION FOR RECONSIDERATION BECAUSE DISMISSAL WAS NOT AN APPROPRIATE SANCTION.**

Even assuming, *arguendo*, Sortland violated Chapter 15-6, dismissing his client's case was not an appropriate sanction to rectify the violation. While findings of fact are reviewed under the clearly erroneous standard and conclusion of law are reviewed de novo, the ultimate decision to dismiss under Rule 41(b) is reviewed for an abuse of discretion. *Storm v. Durr*, 2003 S.D. 6, ¶ 8, 657 N.W.2d 34, 36 (citation omitted).

The availability of dismissal as a sanction is "set against the backdrop of [this Court's] preference to adjudicate cases on their merits, where possible." *Olson v. Huron Reg'l Med. Ctr., Inc.*, 2025 S.D. 34, ¶ 34, -- N.W.2d --. "The severity of the sanction must be tempered with a consideration of the equities." *Dudley*, 2003 S.D. 84, ¶ 16, 667 N.W.2d at 649. "Less drastic alternatives should be employed before sanctions are imposed which hinder a party's day in court and thus defeat the very objective of the litigation, namely to seek the truth from those who have knowledge of the facts." *Magbuhat v. Kovarik*, 382 N.W.2d 43, 45 (S.D. 1986) (citing *Chittenden & Eastman Co. v. Smith*, 286 N.W.2d 314, 316-17 (S.D. 1979)). As such, "[c]ourts are reluctant to uphold dismissals merely to sanction errant attorneys." *Dudley*, 2003 S.D. 84, ¶ 15, 667 N.W.2d at 649 (citing *Buck v. United States Dep't of Agric. Farmers Home Admin.*, 960 F.2d 603, 608 (6th Cir. 1992)). "Dismissal . . . should be the rare judicial act." *Chittenden*, 286 N.W.2d at 316. It depends "upon whether a plaintiff's conduct 'rise[s] to the level of egregiousness which should preclude [the case] from proceeding[.]"' *Olson*, 2025 S.D. 34, ¶ 33 (citations omitted) (alterations in original).

This Court has set forth five factors that must be considered before imposing a sanction for violations of Chapter 15-6, including:

- (1) whether the party's failure to cooperate in discovery was attributable to willfulness, bad faith, or the fault of the client;
- (2) whether the adversary was prejudiced by the party's failure to cooperate in discovery;
- (3) whether there is a need for deterrence in a particular sort of noncompliance;
- (4) whether the party was warned that failure to cooperate could lead to dismissal; and
- (5) whether less drastic sanctions can be imposed before dismissal.

*Dudley*, 2003 S.D. 84, ¶ 16, 667 N.W.2d at 649 (citations omitted). This Court recently adopted substantially similar factors for dismissals based on want of prosecution under Rule 41(b). *Olson*, 2025 S.D. 34, ¶ 40 (explaining these factors are “adaptable and easy for courts to apply as they consider Rule 41(b) motions”). Instead of the third factor, the Court included “the merits of the plaintiff’s claim for relief.” *Id.* The Court also explained that while “no factor should be preeminent,” “these factors are eminently practical. For example, it is entirely reasonable in most instances for a court to warn plaintiffs that further unnecessary delay could result in the dismissal of their complaint.” *Id.* at ¶ 41. There, this Court vacated the dismissal because the circuit court failed to adequately weigh these factors. *Id.* at ¶ 42. The Court also re-emphasized its “strong aversion to the sanction of dismissal and, more importantly perhaps, the utility of other, less drastic means of encouraging promptitude before outright dismissal.” *Id.* at ¶ 38.

Here, the circuit court did not adequately assess the requisite factor before issuing the most extreme sanction available. Proper consideration of these factors demands the conclusion that dismissal was inappropriate. Therefore, this Court should vacate the judgment and remand for further proceedings.

**A. The Circuit Court Failed to Adequately Weigh the Equities before Ordering the Sanction of Dismissal.**

The judgment of dismissal was not based on findings that Mike was responsible for the alleged discovery violations, but that Sortland failed to serve as a “gatekeeper” between his client and the court and that Sortland would continue to “abuse the rules.” MFR Tr. at 23-24. The circuit court acknowledged as much during the subsequent hearing on the Motion for Reconsideration when it stated that it did not make any findings that Mike was responsible for the alleged procedural errors, before it went on to speculate, without evidence, that Mike was somehow responsible based on how counsel had drafted pleadings. MFR Tr. at 23-24.

Moreover, the circuit court expressly acknowledged when it entered the judgment that Mike was being deprived of his day in court because of Sortland’s errors, but that the court was not concerned about doing so because of past litigation involving the Gibson family. Tr. 28:3-15. No evidence was submitted in support of GFLP’s Motion to Dismiss concerning such litigation, the last of which was terminated in 2016, well before the Disputed Transaction that Mike sought rescission of. Notably, the circuit court previously expressed at the outset of this case that it was “tempted” to use its discretion to dismiss the case on the same basis when it denied the Rule 12(b) motions:

I must say it is tempting to issue -- to use that discretion to grant a motion for a case that I cannot help but observe is the third lawsuit involving these parties, but again I don’t get to really consider that.

(App.00098-00099). It was equally improper to consider past litigation to justify dismissing a party’s case based on his attorney’s conduct on procedural matter. The judgment stands in direct contradiction to this Court’s directive that “[a] dismissal should only be resorted to when the ‘failure to comply has been due to . . . willfulness, bad faith,

or any fault of petitioner.” *Dudley*, 2003 S.D. 84, ¶ 14, 667 N.W.2d at 649.

To that end, there was no evidence Mike had anything to do with the alleged procedural errors. The application of the physician-patient privilege and waiver are legal questions evaluated by counsel, and how to serve a subpoena is a procedural matter handled by attorneys. This was demonstrated by the correspondence between Sortland and Alvine discussing the May 2024 subpoenas and Rule 45(b)’s pre-service requirement alone. (App.00051-00056). Likewise, it was also undisputed LeBlanc spoke to Sortland’s secretary about PLHS’s production of medical records, not Sortland. (App.00084).

Moreover, the record did not support that either Mike or his counsel acted willfully or in bad faith or that counsel would continue to “abuse the rules,” as the circuit court prophesized. For example, counsel immediately rectified the procedural deficiencies in the May 2024 subpoenas as soon as it was brought to their attention and those errors were not repeated. When Delores’ deposition became untenable due to her health, it was cancelled. (App.00068-00069). Sortland also contacted defense counsel twice indicating Mike would agree to a protective order for medical records and requested their input on the draft Second Amended Complaint, but received no response. (App.00072, 00075-00079). The circuit court’s conclusion Sortland acted in bad faith was based primarily on him disputing the alleged violations of Chapter 15-6. Tr. 27:7-19. This suggests that unsuccessfully disputing alleged violations of Chapter 15-6 warrants dismissal of your client’s case, an untenable result in our adversarial system.

Sortland was also never warned serving subpoenas for or receiving Delores’ medical records could result in dismissal of his client’s case. *See Olson*, 2025 S.D. 34, ¶ 41 (“it is entirely reasonable in most instances for a court to warn plaintiffs”). The circuit

court's dismissal was the *first* time the discovery dispute was heard by the court. This inequity is compounded by the fact that GFLP's Motion to Dismiss presented an issue of first impression. As explained in Section II, there is nothing in Chapter 15-6 prohibiting subpoenas for and/or receipt of medical records that are believed not to be protected from disclosure, including when an objection is made but never brought before the court. Indeed, GFLP's Motion did not cite to any South Dakota authority prescribing a different procedure, (CR980-81), and again, a plethora of outside authority indicates the filing of a motion has no impact on discovery. *See supra* FN 3. For the record, Mike has no objection to this Court prescribing a different or more specific procedure and does request the Court clarify the parameters for this discovery to guide counsel in the future. However, the fact remains no such guidance existed under South Dakota law before Mike's case was dismissed without warning.

All of the foregoing militates against the conclusion that either Mike or his counsel acted willfully or in bad faith such that dismissal would be necessary to deter noncompliance. Moreover, the circuit court's reliance on Sortland's purported failures as "gatekeeper" and concerns about his continued involvement demonstrates that the availability of less extreme sanctions were not adequately assessed either. *See Olson*, 2025 S.D. 34, ¶¶ 42-45 (vacating judgment when court "did not consider a less serious sanction before ordering dismissal"). The circuit court's findings and concerns about Sortland would be remedied in their entirety by his disqualification—an alternative remedy suggested by GFLP. (CR964). To that end, those concerns on remand have been remedied because Sortland and Alvine both formally withdrew after this appeal was filed.

Lastly, the circuit court did not evaluate whether there was any prejudice to Appellees nor did the evidence reflect that there was. *Olson*, 2025 S.D. 34, ¶ 42 (“there is no indication how the defendants were prejudiced.”). The subpoenas for medical records were pre-served on Appellees prior to being served on the providers and the PLHS medical records did not belong to Appellees such that they could claim prejudice from them being disclosed. Appellees had sufficient time to object, as reflected by GFLP filing its Motion to Quash on November 18, 2024. GFLP, however, inexplicably failed to set its motion for a hearing until January of 2025, and Appellees ignored Sortland’s communications seeking to stipulate to a protective order and providing the draft of the Second Amended Complaint. Any prejudice to Appellees was borne by their inaction.

The conclusion that dismissal was inappropriate is inescapable once the facts of the case are applied to the requisite facts and the equities are adequately considered.

#### CONCLUSION

As set forth herein, Mike respectfully requests that this Court vacate the judgment of dismissal and remand for further proceedings.

Dated this 8th day of August, 2025.

CUTLER LAW FIRM, LLP  
Attorneys at Law

/s/ Jonathan A. Heber

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**REQUEST FOR ORAL ARGUMENT**

Appellant respectfully requests oral argument before the Court.

/s/ Jonathan A. Heber

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Appellant's Brief does not exceed the word limit set forth in SDCL 15-26A-66, said Brief containing 9,849 words, exclusive of the table of contents, table of authorities, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel.

/s/ Jonathan A. Heber

**CERTIFICATE OF SERVICE**

I, Jonathan A. Heber, do hereby certify that on this 8th day of August, 2025, I have electronically filed the foregoing with the Clerk of Court using the Odyssey File & Serve system which will send notification of such filing to the following:

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Circuit Court Attorneys for Michael A. Gibson

/s/ Jonathan A. Heber  
One of the Attorneys for Appellant

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

---

No. 31073

---

Michael A. Gibson

Appellant,

v.

Greg Gibson, Individually, Joan Gibson, Individually, and Gibson Family Limited Partnership, a South Dakota Limited Partnership; Robert M. Ronayne, and Ronayne Law Office, P.C.

Appellees.

---

Appeal from the Circuit Court, Third Circuit  
Codington County, South Dakota

The Honorable Carmen Means  
Circuit Court Judge

---

**APPENDIX**

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**ATTORNEYS FOR APPELLANT  
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Notice of Appeal filed April 25, 2025

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STATE OF SOUTH DAKOTA )  
: SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,

14CIV. 23-000350

Plaintiff,

vs.

GREG GIBSON, INDIVIDUALLY, JOAN  
GIBSON, INDIVIDUALLY, AND GIBSON  
FAMILY LIMITED PARTNERSHIP, A  
SOUTH DAKOTA LIMITED PARTNERSHIP;  
ROBERT M. RONAYNE, AND RONAYNE  
LAW OFFICE, P.C.,

**ORDER AND JUDGMENT**

Defendants.

A hearing was held on Tuesday, March 11, 2025, before the Honorable Carmen A. Means on Defendant Gibson Family Limited Partnership's Motion to Quash Subpoena Duces Tecum and for Protective Order, Defendant Gibson Family Limited Partnership's Motion to Quash Subpoenas Duces Tecum for Medical Records and Bills and for Protective Order, Plaintiff's Motion to Amend Pleadings, Defendant Gibson Family Limited Partnership's Motion to Quash Subpoenas Duces Tecum to Lee Hendricks, PsyD and for Protective Order, Defendant Gibson Family Limited Partnership's Motion to Dismiss for Court Rule and Other Violations or, Alternatively, for Other Appropriate Sanctions, Defendant Greg and Joan Gibson's Motion to Quash Subpoenas Duces Tecum, Plaintiff's Motion for Schwan Financial to Disgorge Fees and Expenses Paid by Plaintiff, and Plaintiff's Motion to Disqualify Attorney Edwin E. Evans and His Law Firm of Evans, Haigh & Arndt, LLP. Plaintiff appeared by and through his counsel of record, Grant G. Alvine, Mark J. Welter, and Alvine Law Firm, LLP and Paul A. Sortland and Sortland Law Office, PLLC. Defendants Greg Gibson and Joan Gibson appeared by and through

their counsel of record, Sander J. Morehead, Jacob R. Schneider, and Woods, Fuller, Shultz & Smith, P.C. Defendant Gibson Family Limited Partnership appeared by and through its counsel of record, Ryan W.W. Redd and Evans, Haigh & Arndt, LLP. Defendants Robert M. Ronayne and Ronayne Law Office, P.C. appeared by and through their counsel of record, Zachary W. Peterson and Richardson, Wyly, Wise, Sauck & Hieb, LLP. Joseph Erickson and Schoenbeck & Erickson, P.C. appeared on behalf of Schwan Financial Group, LLC. James C. Roby and James C. Roby, P.C. appeared on behalf of Prairie Lakes Healthcare System, Inc.

Based upon the files, records, pleadings, and the arguments of counsel, and the Court's ruling and analysis during the hearing which is incorporated into this Order, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

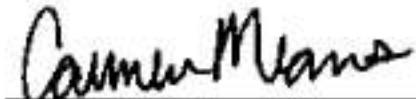
1. Defendant Gibson Family Limited Partnership's Motion to Dismiss for Court Rule and Other Violations or, Alternatively, for Other Appropriate Sanctions is GRANTED.
2. Judgment is hereby entered in favor of the Defendants and Plaintiff's Complaint is dismissed in its entirety and with prejudice.
3. Upon application by Defendants Greg and Joan Gibson for taxation of costs, the Defendants Greg and Joan Gibson may recover costs from Plaintiff in the amount of ~~5/15/2025 COSTS INSERTED BY CLERK OF COURTS~~ § 1,305.77, to be hereafter inserted by the clerk of the court.
4. Upon application by Defendant Gibson Family Limited Partnership for taxation of costs, Defendant Gibson Family Limited Partnership may recover costs from Plaintiff in the amount of ~~5/15/2025 COSTS INSERTED BY CLERK OF COURTS~~ § 1,280.77, to be hereafter inserted by the clerk of the court.
5. Upon application by Defendants Robert M. Ronayne and Ronayne Law Office P.C. for taxation of costs, the Defendants Robert M. Ronayne and Ronayne Law Office P.C. may

recover costs from Plaintiff in the amount of \$ 1,612.14, to be hereafter inserted by the clerk of the court.

6. Defendant Gibson Family Limited Partnership's Motion to Quash Subpoena Duces Tecum and for Protective Order, Defendant Gibson Family Limited Partnership's Motion to Quash Subpoenas Duces Tecum for Medical Records and Bills and for Protective Order, Plaintiff's Motion to Amend Pleadings, Defendant Gibson Family Limited Partnership's Motion to Quash Subpoenas Duces Tecum to Lee Hendricks, PsyD and for Protective Order, Defendant Greg and Joan Gibson's Motion to Quash Subpoenas Duces Tecum, Plaintiff's Motion for Schwan Financial to Disgorge Fees and Expenses Paid by Plaintiff, and Plaintiff's Motion to Disqualify Attorney Edwin E. Evans and His Law Firm of Evans, Haigh & Arndt, LLP are DENIED as moot.

3/26/2025 2:19:20 PM

BY THE COURT:



Hon. Carmen A. Means

Attest:

Beachler, Kaylee  
Clerk/Deputy



STATE OF SOUTH DAKOTA )  
: SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,

14CIV. 23-000350

Plaintiff,

vs.

GREG GIBSON, INDIVIDUALLY, JOAN  
GIBSON, INDIVIDUALLY, AND GIBSON  
FAMILY LIMITED PARTNERSHIP, A  
SOUTH DAKOTA LIMITED PARTNERSHIP;  
ROBERT M. RONAYNE, AND RONAYNE  
LAW OFFICE, P.C.,

**ORDER**

Defendants.

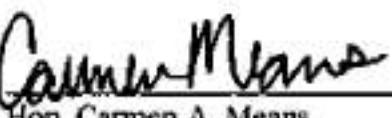
A hearing was held on Tuesday, April 15, 2025, before the Honorable Carmen A. Means on Plaintiff's Motion for Reconsideration. Plaintiff appeared by and through his counsel of record, Mark J. Welter and Alvine Law Firm, LLP; Defendants Greg Gibson and Joan Gibson appeared by and through their counsel of record, Sander J. Morehead and Woods, Fuller, Shultz & Smith, PC; Defendant Gibson Family Limited Partnership appeared by and through its counsel of record, Edwin E. Evans and Evans, Haigh & Arndt, LLP; Defendants Robert M. Ronayne and Ronayne Law Office, P.C. appeared by and through their counsel of record, Zachary W. Peterson and Richardson, Wyly, Wise, Sauck & Hieb, LLP; and Schwan Financial Group, LLC appeared by and through its counsel of record, Joseph Erickson and Schoenbeck & Erickson, PC. Based upon the files, records, pleadings, arguments of counsel, and the Court's oral ruling and analysis during the hearing which is incorporated into this record by this reference, it is hereby:

ORDERED, ADJUDGED, and DECREED that Plaintiff's Motion for Reconsideration is denied.

4/17/2025 3:44:31 PM

BY THE COURT:

  
Attest:  
Feltch, Lisa  
Clerk/Deputy

  
Hon. Carmen A. Means

1 STATE OF SOUTH DAKOTA | IN CIRCUIT COURT  
2 |  
3 COUNTY OF CODINGTON | THIRD JUDICIAL CIRCUIT

4 \_\_\_\_\_ )  
5 Michael Gibson, )  
6 Plaintiff, ) Motion Hearing  
7 vs. ) Civ. 23-350  
8 Greg Gibson, individually, )  
9 Joan Gibson, individually, )  
10 and Gibson Family Limited )  
11 Partnership, a South Dakota )  
12 Limited Partnership; Robert )  
13 M. Ronayne, and Ronayne Law )  
14 Office, P.C., )  
15 Defendants.  
16 \_\_\_\_\_

17 BEFORE: THE HONORABLE CARMEN MEANS  
18 Circuit Court Judge  
19 Watertown, South Dakota  
20 March 11, 2025

21 APPEARANCES:

22 For Michael Gibson: Mr. Paul Sortland  
23 Sortland Law Office  
24 Minneapolis, MN

25 For Greg and Joan Mr. Sander Morehead  
26 Gibson: M. Jake Schneider  
27 Woods, Fuller, Shultz & Smith  
28 Sioux Falls, SD

29 For Robert Ronayne: Mr. Zachary Peterson  
30 Richardson, Wyly, Wise, Sauck & Hieb  
31 Aberdeen, SD

1 For Schwan  
2 Financial: Mr. Joe Erickson  
3 Watertown, SD

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For Prairie Lakes: Mr. James Roby  
Watertown, SD

1 believe Mr. Redd when he says you know this issue because you  
2 brought it up in a Minnesota court, you know notice is necessary  
3 and you know that the sanction for disregarding the objections  
4 of other counsel and just leaving them out of the process can be  
5 dismissal of the suit?

6 MR. SORTLAND: Well, I'm pretty sure I lost that  
7 motion.

8 THE COURT: You did.

9 MR. SORTLAND: Yeah, so.

10 THE COURT: So is that the lesson you learned? I  
11 guess I can do it too? I'm astonished.

12 MR. SORTLAND: All I can say, I apologize, I would  
13 expect my opposing counsel to watch out for his part in  
14 participating in those rules and watching the requirements of  
15 having a hearing scheduled, but I do apologize. I think it  
16 would be very harmful to my client to have this case dismissed,  
17 it would be very harmful for him to try to find another counsel,  
18 that's why he's got me, I'm out of state counsel, but I think he  
19 has -- I think my client has a very good case and I think the  
20 Court could issue protective orders regarding the use of this  
21 information, I think that would be appropriate. I would like to  
22 be able to use everything at trial but if the Court thinks some  
23 retractions are necessary we can accomplish that.

24 THE COURT: All right. Mr. Sortland, I'm going to say  
25 this, I understand that litigation is often looked at by the

1 parties as something personal and as something spiteful and as  
2 something where they want to harass and intrude and get things  
3 that they aren't supposed to have. I expect that the attorneys  
4 are the gatekeeper to make sure that that party's ill will isn't  
5 taken on by the attorneys. I think you've lost the forest for  
6 the trees here and while I hear what you're saying that you  
7 think you've got a great case, I look at this case as you  
8 blatantly and in bad faith disregarded the rules that are in  
9 place and the statutes that are in place to protect privileged  
10 and private medical records and that after you did so you did  
11 take a no harm no foul approach to it. Doesn't matter that they  
12 objected, I just assumed everything was okay and I got these  
13 records anyway. I'm just astonished at your response and as I  
14 say when I listen to your response and I listen to the abuse of  
15 discovery that has occurred here I can't think of any way to be  
16 assured that you aren't going to engage in this kind of conduct  
17 again other than to dismiss this case because you have no  
18 remorse for what you did, the fact that you apologized to me  
19 here in open court means nothing to me. You would do this again  
20 in a heartbeat. Your manner here in the courtroom, the words  
21 that you used in your submissions all lead me to believe that if  
22 you are given the opportunity to abuse the rules again you will  
23 and you will say that it is just because you want to advocate  
24 for your client and you lost sight of everything else. I took  
25 this matter first because honestly this is the decisive matter

1 for me when I read about these abuses in the submissions and  
2 when I hear the response here in the courtroom, I think the  
3 appropriate sanction is to dismiss this case. I am very loathed  
4 to dismiss actions and to strip parties of their right to have  
5 things litigated because of errors by their counsel, but when I  
6 weigh that risk against the idea that there have already been  
7 previous litigations with this family and with these exact same  
8 people, I have less of a concern that I am stripping Michael  
9 Gibson of some inherent right that he has to move this case  
10 forward. So when I balance those things and when I hear what I  
11 hear in the courtroom I think the appropriate sanction is for me  
12 to dismiss this case. Based upon that order and based upon that  
13 rule which I assume will be appealed, we'll let the Supreme  
14 Court weigh in on this, but I think that moots the other motions  
15 that are here and that's going to conclude the hearing.

16 (Proceeding concluded.)

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1 IN CIRCUIT COURT

2 :SS

CERTIFICATE

3 COUNTY OF CODINGTON

4 )

5 This is to certify that I, Dawn Russell, Court Reporter in  
6 the above-named County and State, took the foregoing  
7 proceedings, and the foregoing page 1-29, inclusive, are a true  
8 and correct transcript of my stenotype notes.

9 Dated at Watertown, South Dakota, this 10th day of April,  
10 2025.

11  
12 /s/ Dawn Russell

13 Dawn Russell, Court Reporter

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1 STATE OF SOUTH DAKOTA | IN CIRCUIT COURT  
2 |  
3 COUNTY OF CODINGTON | THIRD JUDICIAL CIRCUIT

4 \_\_\_\_\_ )  
5 Michael Gibson, )  
6 Plaintiff, ) Motion Hearing  
7 vs. ) 14Civ. 23-0350  
8 Greg Gibson, individually, )  
9 Joan Gibson, individually, )  
and Gibson Family Limited )  
10 Partnership, a South Dakota )  
Limited Partnership, Robert )  
Ronayne, and Ronayne Law )  
11 Office, P.C. )  
12 Defendants. )  
13 \_\_\_\_\_ )

14 BEFORE: THE HONORABLE CARMEN MEANS  
15 Circuit Court Judge  
16 Watertown, South Dakota  
April 15, 2025

17  
18 APPEARANCES:

19 For the Plaintiff: Mr. Mark Welter  
20 Alvine Law Firm  
21 Sioux Falls, SD

22 For the Defendant Mr. Ed Evans  
23 Gibson Family Evans, Haigh, & Arndt  
24 Limited Sioux Falls, SD  
Partnership:

25 For the Defendant Mr. Sander Morehead  
26 Greg and Joan Woods, Fuller, Shultz & Smith  
Gibson: Sioux Falls, SD

1 For the Defendant Mr. Zachary Peterson  
2 Robert Ronayne: Richardson Law Firm  
3 Aberdeen, SD

4 For the Defendant Mr. Joe Erickson  
5 Schwan Financial: Schoenbeck & Erickson  
6 Watertown, SD

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1 so it's not credible. And I have nothing further, your Honor.

2 THE COURT: The Court granted a hearing on a motion to  
3 reconsider because the Court had felt a large amount of anger at  
4 Mr. Sortland for his manner in conducting the hearing on March  
5 11, to his responses to the Court, to his cavalier attitude, and  
6 for the things that I added when I supplemented the record here  
7 today which is the idea that Mr. Sortland seems to blame  
8 everybody else in the world for conspiring with the defendant  
9 here Greg Gibson and not bringing forth Michael Gibson's reality  
10 of the way he thinks that it should be brought forth.

11 MR. WELTER: Your Honor, could I add?

12 THE COURT: No. No thank you. When the Court takes  
13 an extreme view of the behavior of counsel and as a result the  
14 behavior of the plaintiff the Court, at least this Court, wants  
15 to be sure that I haven't acted with emotion as opposed to with  
16 reason and so while I've been waiting for this hearing, as I've  
17 been anticipating this hearing, I thought about the findings  
18 that I made and I thought about the importance I think of  
19 attorneys not to lose the forest for the trees and I think  
20 that's what happened here and in doing so important privileged  
21 information was gained in a way that I continue to feel was  
22 dishonest and egregious and so I granted this motion to  
23 reconsider primarily because I didn't want my displeasure at  
24 Mr. Sortland to be unfairly reflected on his client, but I do  
25 think it is well worth noting what Mr. Evans said that it is not

1 that Mr. Sortland has a strange world view, the affidavits of  
2 the plaintiff in this matter are illustrative of where the  
3 source of that world view is. And so you have your remedy  
4 Mr. Welter, I made sure that this motion to reconsider hearing  
5 happened before the appeal deadline, if the Supreme Court thinks  
6 that I didn't make sufficient findings or that I was precipitous  
7 in granting a motion to dismiss I have no doubt that they will  
8 inform me of that and I will take up that issue if it should  
9 come to that, but I continue to feel as if the behavior here,  
10 particularly with regard to confidential medical records was  
11 repeated, it was dishonest, it was egregious, and then on top of  
12 all of that Mr. Sortland came to court and said it was everybody  
13 else's problem and everybody else's mistake and Mr. Welter,  
14 while I said you present a much more palatable version of that  
15 to me here today, essentially I feel like you're saying the same  
16 thing and so nothing really has changed since March 11 to  
17 today's date. And so I am not going to reconsider the decision  
18 that I made, I made it for what I feel are well founded reasons,  
19 I made it because of the things that I was in a unique position  
20 to see when I was here in the courtroom and as I was interacting  
21 with the attorneys, and so I'm not going to reconsider my  
22 decision, the judgment will stand as it is and you will have  
23 your right to appeal that decision. We're going to be in recess  
24 today.

25 (Proceeding concluded.)

1 IN CIRCUIT COURT

2 :SS

CERTIFICATE

3 COUNTY OF CODINGTON

4 )

5 This is to certify that I, Dawn Russell, Court Reporter in  
6 the above-named County and State, took the foregoing  
7 proceedings, and the foregoing page 1-38, inclusive, are a true  
8 and correct transcript of my stenotype notes.

9 Dated at Watertown, South Dakota, this 9th day of June,  
10 2025.

11  
12 /s/ Dawn Russell

13 Dawn Russell, Court Reporter

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STATE OF SOUTH DAKOTA )  
:SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,  
v.  
Plaintiff,  
GREG GIBSON, individually; JOAN  
GIBSON, individually, and GIBSON  
FAMILY LIMITED PARTNERSHIP, a South  
Dakota Limited Partnership; ROBERT M.  
RONAYNE, and RONAYNE LAW OFFICE,  
P.C.,  
Defendants.

14CIV23-000350

Judge Carmen Means

SUBPOENA DUCES TECUM  
LEE HENDRICKS, PsyD

TO : Lee Hendricks, PsyD, Firefly Counseling, 2013 Willow Creek Drive, Suite 2B,  
Watertown, SD 57201

You are commanded to produce and permit inspection and copying of the listed documents or objects at Sortland Law Office, PLLC, 431 South Seventh Street, Suite 2415, Minneapolis MN 55415, on November 19, 2024, at 8:00 a.m., and in the manner required by SDCL 15-6-45(a). As an alternative, you may produce the documents to counsel in pdf copies of all documents via a Dropbox link that will be set up upon your request. Please contact the undersigned counsel, Paul A. Sortland, to set up this Dropbox link.

**YOU SHOULD TREAT THIS DOCUMENT AS YOU WOULD A COURT ORDER. IF YOU FAIL TO COMPLY WITH THE COMMAND(S) IN THIS DOCUMENT WITHOUT ADEQUATE EXCUSE, THE COURT MAY FIND YOU IN CONTEMPT AND ASSESS MONETARY OR OTHER SANCTIONS AGAINST YOU.**

**YOU HAVE CERTAIN OBLIGATIONS AND RIGHTS AS IT CONCERN THIS DOCUMENT, INCLUDING THOSE SET FORTH IN SDCL §15-6-45(b)-(g).**

**YOU SHOULD CONSIDER CONTACTING AN ATTORNEY REGARDING YOUR OBLIGATIONS AND RIGHTS.**

For the purpose of this Subpoena, the following definitions and instructions shall apply:

1. The term DOCUMENT shall mean the original and any copy of any written, typed, printed, recorded or graphic matter of any kind, however produced, including but not limited to letters or other correspondence, telegrams, memoranda, reports, notes, summaries, tabulations, work papers, cost sheets, canceled checks, financial reports and statements, motion

picture films, bookkeeping and accounting records of all types, photographs, advertisements, tape recordings, video or voice calls, voice mail, micro film, other data compilations, including digital data, and the memory units containing data, emails, electronic calendars, text messages, electronic chat messages, and chat messages, saved files, transcripts, downloads, remote data storage, Zoom, Microsoft, Cisco WebEx, Cloud and any other facilities or companies used for data hosting and storage.

2. The term STATEMENT shall mean any oral conversation, oral statement or voice communication.

3. IDENTIFY, IDENTITY, IDENTIFICATION shall mean:

(a) When referring to a natural person:

- (i) the person's full name;
- (ii) the person's present or last known business affiliation, title and position;
- (iii) the nature and description of the person's duties and responsibilities;
- (iv) the person's current or last known address and telephone number.

(b) When referring to a DOCUMENT:

- (i) its author, addressee and copyees and name of technology platforms and company websites, webpage, email, address and contact information for those services;
- (ii) the type of DOCUMENT (e.g., letter, memorandum, etc.);
- (iii) its subject matter and substance;
- (iv) if the above information is not available, some other means of identifying it;
- (v) its present location and the IDENTITY of its present custodians;
- (vi) if such DOCUMENT was, but is no longer in your possession or subject to your control, or in existence, state whether it is (1) missing or lost, (2) has been destroyed, (3) has been transferred, voluntarily or involuntarily to others, or (4) otherwise disposed of; and in each instance, explain the circumstances for such disposition and the date or approximate date of such disposition.

(c) When referring to a STATEMENT:

- (i) the form of STATEMENT (e.g., in person, by telephone or other specified mode);
- (ii) the IDENTITY of the sender or maker and recipients(s) or persons hearing the same;
- (iii) its date;
- (iv) its full and exact substance;
- (v) IDENTIFICATION of all DOCUMENTS confirming, relating, referring to the subject STATEMENT.

4. The phrase ALL FACTS AND CIRCUMSTANCES, when used in connection

with a request for information concerning a claim or allegation, shall mean:

- (a) a detailed summary of all evidentiary facts bearing upon or tending to support such claim or allegation;
- (b) IDENTIFICATION of the persons having knowledge of such facts;
- (c) a separate description of the facts known by each such person;
- (d) IDENTIFICATION of all DOCUMENTS bearing upon or tending to support such claim or allegation.

5. All requests in this subpoena include all persons, attorneys, lawyers, including but not limited to the following and anyone on their staff or part of their business: Robert Ronayne, Ronayne Law Office, Ronayne and Cogley, Gregory Gibson, Joan Gibson, Champaygn Ranch Inc, LeAnn Swenson, in anything related in any way to GFLP and any of its Partners.

6. GFLP shall refer to The Gibson Family Limited Partnership and any related entity or organization.

#### **SCHEDULE A**

1. All medical records from January 1, 2018 to present date, for Delores Gibson kept by Firefly Counseling.
2. All billings from January 1, 2018 to present date, for Delores Gibson kept by Firefly Counseling.

YOU ARE HEREBY NOTIFIED that the Rules of Civil Procedure requires supplementation of these discovery requests regarding:

- a. the identity and location of persons having knowledge of discoverable matters, and
- b. the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony.

You are under a duty to reasonably amend a response if you obtain information upon the basis of which

- a. you know that the response was incorrect when made, or

b. you know that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

Objection will be made at the time of trial to any attempt to introduce evidence which is sought by these discovery requests and for which improper or insufficient disclosure has been made.

Issued in the name of the Honorable Carmen Means, Judge of said Court this 15<sup>th</sup> day of November, 2024.

/s/ Paul A. Sortland

---

**Paul A. Sortland (MN Lic. #103573)**  
**SORTLAND LAW OFFICE, PLLC**  
431 South Seventh Street, Suite 2415  
Minneapolis, Minnesota 55415  
(612) 375-0400  
sortland@sortland.com

/s/ Grant G. Alvine

---

**Grant G. Alvine (So. Dak. # 18)**  
**ALVINE LAW FIRM, LLP**  
809 W. 10<sup>th</sup> Street  
Sioux Falls, SD 57104  
(605) 275-0808  
grant@alvinelaw.com

**ATTORNEYS FOR PLAINTIFF**

STATE OF SOUTH DAKOTA )  
:SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,  
Plaintiff,  
v.  
GREG GIBSON, individually; JOAN  
GIBSON, individually, and GIBSON  
FAMILY LIMITED PARTNERSHIP, a South  
Dakota Limited Partnership; ROBERT M.  
RONAYNE, and RONAYNE LAW OFFICE,  
P.C.,  
Defendants.

14CIV23-000350

Judge Carmen Means

SUBPOENA DUCES TECUM  
DR. SARAH A REIFFENBERGER

TO : DR. SARAH A. REIFFENBERGER, Prairie Lakes Brown Clinic, 506 First Avenue SE,  
Watertown, SD 57201

You are commanded to produce and permit inspection and copying of the listed documents or objects at Prairie Lakes Brown Clinic Main, 506 First Avenue SE, Watertown, SD 57201 on November 21, 2024, at 9:00 a.m., and in the manner required by SDCL 15-6-45(a). As an alternative, you may produce the documents to counsel in pdf copies of all documents via a Dropbox link that will be set up upon your request. Please contact the undersigned counsel, Paul A. Sortland, to set up this Dropbox link.

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picture films, bookkeeping and accounting records of all types, photographs, advertisements, tape recordings, video or voice calls, voice mail, micro film, other data compilations, including digital data, and the memory units containing data, emails, electronic calendars, text messages, electronic chat messages, and chat messages, saved files, transcripts, downloads, remote data storage, Zoom, Microsoft, Cisco WebEx, Cloud and any other facilities or companies used for data hosting and storage.

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- (iii) its subject matter and substance;
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- (d) IDENTIFICATION of all DOCUMENTS bearing upon or tending to support such claim or allegation.

5. All requests in this subpoena include all persons, attorneys, lawyers, including but not limited to the following and anyone on their staff or part of their business: Robert Ronayne, Ronayne Law Office, Ronayne and Cogley, Gregory Gibson, Joan Gibson, Champaygn Ranch Inc, LeAnn Swenson, in anything related in any way to GFLP and any of its Partners.

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#### **SCHEDULE A**

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2. All billings from January 1, 2018 to present date, for Delores Gibson kept by Prairie Lakes Brown Clinic.

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Issued in the name of the Honorable Carmen Means, Judge of said Court this 15<sup>th</sup> day of November, 2024.

/s/ Paul A. Sortland

---

**Paul A. Sortland (MN Lic. #103573)**  
**SORTLAND LAW OFFICE, PLLC**  
431 South Seventh Street, Suite 2415  
Minneapolis, Minnesota 55415  
(612) 375-0400  
sortland@sortland.com

/s/ Grant G. Alvine

---

**Grant G. Alvine (So. Dak. # 18)**  
**ALVINE LAW FIRM, LLP**  
809 W. 10<sup>th</sup> Street  
Sioux Falls, SD 57104  
(605) 275-0808  
grant@alvinelaw.com

**ATTORNEYS FOR PLAINTIFF**

STATE OF SOUTH DAKOTA )  
:SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,

14CIV23-000350

Plaintiff,  
v.

Judge Carmen Means

GREG GIBSON, individually; JOAN  
GIBSON, individually, and GIBSON  
FAMILY LIMITED PARTNERSHIP, a South  
Dakota Limited Partnership; ROBERT M.  
RONAYNE, and RONAYNE LAW OFFICE,  
P.C.,

SUBPOENA DUCES TECUM  
PRAIRIE LAKES BROWN CLINIC-MAIN

Defendants.

TO : KEEPER OF THE RECORDS: Prairie Lakes Brown Clinic Main, 506 First Avenue SE,  
Watertown, SD 57201.

You are commanded to produce and permit inspection and copying of the listed documents or objects at Alvine Law Office, LLP, 809 W. 10<sup>th</sup> Street, Sioux Falls, SD 57104 on December 6, 2024, at 1:00 p.m., and in the manner required by SDCL 15-6-45(a). As an alternative, you may produce the documents to counsel in pdf copies of all documents via a Dropbox link that will be set up upon your request. Please contact the undersigned counsel, Paul A. Sortland, to set up this Dropbox link.

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Issued in the name of the Honorable Carmen Means, Judge of said Court this 15<sup>th</sup> day of November, 2024.

/s/ Paul A. Sortland

---

**Paul A. Sortland (MN Lic. #103573)**  
**SORTLAND LAW OFFICE, PLLC**  
431 South Seventh Street, Suite 2415  
Minneapolis, Minnesota 55415  
(612) 375-0400  
sortland@sortland.com

/s/ Grant G. Alvine

---

**Grant G. Alvine (So. Dak. # 18)**  
**ALVINE LAW FIRM, LLP**  
809 W. 10<sup>th</sup> Street  
Sioux Falls, SD 57104  
(605) 275-0808  
grant@alvinelaw.com

**ATTORNEYS FOR PLAINTIFF**

STATE OF SOUTH DAKOTA )  
:SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,  
v.  
Plaintiff,  
GREG GIBSON, individually; JOAN  
GIBSON, individually, and GIBSON  
FAMILY LIMITED PARTNERSHIP, a South  
Dakota Limited Partnership; ROBERT M.  
RONAYNE, and RONAYNE LAW OFFICE,  
P.C.,  
Defendants.

14CIV23-000350

Judge Carmen Means

SUBPOENA DUCES TECUM  
PRAIRIE LAKES BROWN CLINIC-  
NORTHRIDGE

TO : KEEPER OF THE RECORDS: Prairie Lakes Brown Clinic Northridge, 511 14<sup>th</sup>  
Avenue NE, Watertown, SD 57201.

You are commanded to produce and permit inspection and copying of the listed documents or objects at Alvine Law Office, LLP, 809 W. 10<sup>th</sup> Street, Sioux Falls, SD 57104 on December 6, 2024, at 1:00 p.m., and in the manner required by SDCL 15-6-45(a). As an alternative, you may produce the documents to counsel in pdf copies of all documents via a Dropbox link that will be set up upon your request. Please contact the undersigned counsel, Paul A. Sortland, to set up this Dropbox link.

**YOU SHOULD TREAT THIS DOCUMENT AS YOU WOULD A COURT ORDER. IF YOU FAIL TO COMPLY WITH THE COMMAND(S) IN THIS DOCUMENT WITHOUT ADEQUATE EXCUSE, THE COURT MAY FIND YOU IN CONTEMPT AND ASSESS MONETARY OR OTHER SANCTIONS AGAINST YOU.**

**YOU HAVE CERTAIN OBLIGATIONS AND RIGHTS AS IT CONCERN THIS DOCUMENT, INCLUDING THOSE SET FORTH IN SDCL §15-6-45(b)-(g).**

**YOU SHOULD CONSIDER CONTACTING AN ATTORNEY REGARDING YOUR OBLIGATIONS AND RIGHTS.**

For the purpose of this Subpoena, the following definitions and instructions shall apply:

1. The term DOCUMENT shall mean the original and any copy of any written, typed, printed, recorded or graphic matter of any kind, however produced, including but not limited to letters or other correspondence, telegrams, memoranda, reports, notes, summaries, tabulations, work papers, cost sheets, canceled checks, financial reports and statements, motion

picture films, bookkeeping and accounting records of all types, photographs, advertisements, tape recordings, video or voice calls, voice mail, micro film, other data compilations, including digital data, and the memory units containing data, emails, electronic calendars, text messages, electronic chat messages, and chat messages, saved files, transcripts, downloads, remote data storage, Zoom, Microsoft, Cisco WebEx, Cloud and any other facilities or companies used for data hosting and storage.

2. The term STATEMENT shall mean any oral conversation, oral statement or voice communication.

3. IDENTIFY, IDENTITY, IDENTIFICATION shall mean:

(a) When referring to a natural person:

- (i) the person's full name;
- (ii) the person's present or last known business affiliation, title and position;
- (iii) the nature and description of the person's duties and responsibilities;
- (iv) the person's current or last known address and telephone number.

(b) When referring to a DOCUMENT:

- (i) its author, addressee and copyees and name of technology platforms and company websites, webpage, email, address and contact information for those services;
- (ii) the type of DOCUMENT (e.g., letter, memorandum, etc.);
- (iii) its subject matter and substance;
- (iv) if the above information is not available, some other means of identifying it;
- (v) its present location and the IDENTITY of its present custodians;
- (vi) if such DOCUMENT was, but is no longer in your possession or subject to your control, or in existence, state whether it is (1) missing or lost, (2) has been destroyed, (3) has been transferred, voluntarily or involuntarily to others, or (4) otherwise disposed of; and in each instance, explain the circumstances for such disposition and the date or approximate date of such disposition.

(c) When referring to a STATEMENT:

- (i) the form of STATEMENT (e.g., in person, by telephone or other specified mode);
- (ii) the IDENTITY of the sender or maker and recipients(s) or persons hearing the same;
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- (iv) its full and exact substance;
- (v) IDENTIFICATION of all DOCUMENTS confirming, relating, referring to the subject STATEMENT.

4. The phrase ALL FACTS AND CIRCUMSTANCES, when used in connection

with a request for information concerning a claim or allegation, shall mean:

- (a) a detailed summary of all evidentiary facts bearing upon or tending to support such claim or allegation;
- (b) IDENTIFICATION of the persons having knowledge of such facts;
- (c) a separate description of the facts known by each such person;
- (d) IDENTIFICATION of all DOCUMENTS bearing upon or tending to support such claim or allegation.

5. All requests in this subpoena include all persons, attorneys, lawyers, including but not limited to the following and anyone on their staff or part of their business: Robert Ronayne, Ronayne Law Office, Ronayne and Cogley, Gregory Gibson, Joan Gibson, Champaygn Ranch Inc, LeAnn Swenson, in anything related in any way to GFLP and any of its Partners.

6. GFLP shall refer to The Gibson Family Limited Partnership and any related entity or organization.

#### **SCHEDULE A**

1. All medical records from January 1, 2018 to present date, for Delores Gibson kept by Prairie Lakes Brown Clinic.
2. All billings from January 1, 2018 to present date, for Delores Gibson kept by Prairie Lakes Brown Clinic.

YOU ARE HEREBY NOTIFIED that the Rules of Civil Procedure requires supplementation of these discovery requests regarding:

- a. the identity and location of persons having knowledge of discoverable matters, and
- b. the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony.

You are under a duty to reasonably amend a response if you obtain information upon the basis of which

- a. you know that the response was incorrect when made, or

b. you know that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

Objection will be made at the time of trial to any attempt to introduce evidence which is sought by these discovery requests and for which improper or insufficient disclosure has been made.

Issued in the name of the Honorable Carmen Means, Judge of said Court this 15<sup>th</sup> day of November, 2024.

/s/ Paul A. Sortland

---

**Paul A. Sortland (MN Lic. #103573)**  
**SORTLAND LAW OFFICE, PLLC**  
431 South Seventh Street, Suite 2415  
Minneapolis, Minnesota 55415  
(612) 375-0400  
sortland@sortland.com

/s/ Grant G. Alvine

---

**Grant G. Alvine (So. Dak. # 18)**  
**ALVINE LAW FIRM, LLP**  
809 W. 10<sup>th</sup> Street  
Sioux Falls, SD 57104  
(605) 275-0808  
grant@alvinelaw.com

**ATTORNEYS FOR PLAINTIFF**

STATE OF SOUTH DAKOTA )  
:SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,  
Plaintiff,  
v.  
GREG GIBSON, individually; JOAN  
GIBSON, individually, and GIBSON  
FAMILY LIMITED PARTNERSHIP, a South  
Dakota Limited Partnership; ROBERT M.  
RONAYNE, and RONAYNE LAW OFFICE,  
P.C.,  
Defendants.

14CIV23-000350

Judge Carmen Means

SUBPOENA DUCES TECUM  
PRAIRIE LAKES HOSPITAL

TO : KEEPER OF THE RECORDS: Prairie Lakes Hospital, 401 9<sup>th</sup> Avenue NW, Building A, Watertown, SD 57201.

You are commanded to produce and permit inspection and copying of the listed documents or objects at Alvine Law Office, LLP, 809 W. 10<sup>th</sup> Street, Sioux Falls, SD 57104 on December 6, 2024, at 1:00 p.m., and in the manner required by SDCL 15-6-45(a). As an alternative, you may produce the documents to counsel in pdf copies of all documents via a Dropbox link that will be set up upon your request. Please contact the undersigned counsel, Paul A. Sortland, to set up this Dropbox link.

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- (ii) the type of DOCUMENT (e.g., letter, memorandum, etc.);
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with a request for information concerning a claim or allegation, shall mean:

- (a) a detailed summary of all evidentiary facts bearing upon or tending to support such claim or allegation;
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- (c) a separate description of the facts known by each such person;
- (d) IDENTIFICATION of all DOCUMENTS bearing upon or tending to support such claim or allegation.

5. All requests in this subpoena include all persons, attorneys, lawyers, including but not limited to the following and anyone on their staff or part of their business: Robert Ronayne, Ronayne Law Office, Ronayne and Cogley, Gregory Gibson, Joan Gibson, Champaygn Ranch Inc, LeAnn Swenson, in anything related in any way to GFLP and any of its Partners.

6. GFLP shall refer to The Gibson Family Limited Partnership and any related entity or organization.

#### **SCHEDULE A**

1. All medical records from January 1, 2018 to present date, for Delores Gibson kept by Prairie Lakes Hospital.
2. All billings from January 1, 2018 to present date, for Delores Gibson kept by Prairie Lakes Hospital.

YOU ARE HEREBY NOTIFIED that the Rules of Civil Procedure requires supplementation of these discovery requests regarding:

- a. the identity and location of persons having knowledge of discoverable matters, and
- b. the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony.

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Issued in the name of the Honorable Carmen Means, Judge of said Court this 15<sup>th</sup> day of November, 2024.

/s/ Paul A. Sortland

---

**Paul A. Sortland (MN Lic. #103573)**  
**SORTLAND LAW OFFICE, PLLC**  
431 South Seventh Street, Suite 2415  
Minneapolis, Minnesota 55415  
(612) 375-0400  
sortland@sortland.com

/s/ Grant G. Alvine

---

**Grant G. Alvine (So. Dak. # 18)**  
**ALVINE LAW FIRM, LLP**  
809 W. 10<sup>th</sup> Street  
Sioux Falls, SD 57104  
(605) 275-0808  
grant@alvinelaw.com

**ATTORNEYS FOR PLAINTIFF**

STATE OF SOUTH DAKOTA )  
:SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,

Plaintiff,  
v.

GREG GIBSON, individually; JOAN  
GIBSON, individually, and GIBSON  
FAMILY LIMITED PARTNERSHIP, a South  
Dakota Limited Partnership; ROBERT M.  
RONAYNE, and RONAYNE LAW OFFICE,  
P.C.,

Defendants.

14CIV23-000350

Judge Carmen Means

SUBPOENA DUCES TECUM  
SANFORD HEALTH  
WATERTOWN CLINIC

TO : KEEPER OF THE RECORDS: Sanford Health Watertown Clinic, 901 4<sup>th</sup> Street NW,  
Watertown, SD 57201.

You are commanded to produce and permit inspection and copying of the listed documents or objects at Alvine Law Office, LLP, 809 W. 10<sup>th</sup> Street, Sioux Falls, SD 57104 on December 6, 2024, at 1:00 p.m., and in the manner required by SDCL 15-6-45(a). As an alternative, you may produce the documents to counsel in pdf copies of all documents via a Dropbox link that will be set up upon your request. Please contact the undersigned counsel, Paul A. Sortland, to set up this Dropbox link.

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picture films, bookkeeping and accounting records of all types, photographs, advertisements, tape recordings, video or voice calls, voice mail, micro film, other data compilations, including digital data, and the memory units containing data, emails, electronic calendars, text messages, electronic chat messages, and chat messages, saved files, transcripts, downloads, remote data storage, Zoom, Microsoft, Cisco WebEx, Cloud and any other facilities or companies used for data hosting and storage.

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6. GFLP shall refer to The Gibson Family Limited Partnership and any related entity or organization.

#### **SCHEDULE A**

1. All medical records from January 1, 2018 to present date, for Delores Gibson kept by Sanford Health Watertown Clinic.
2. All billings from January 1, 2018 to present date, for Delores Gibson kept by Sanford Health Watertown Clinic.

YOU ARE HEREBY NOTIFIED that the Rules of Civil Procedure requires supplementation of these discovery requests regarding:

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Objection will be made at the time of trial to any attempt to introduce evidence which is sought by these discovery requests and for which improper or insufficient disclosure has been made.

Issued in the name of the Honorable Carmen Means, Judge of said Court this 15<sup>th</sup> day of November, 2024.

/s/ Paul A. Sortland

---

**Paul A. Sortland (MN Lic. #103573)**  
**SORTLAND LAW OFFICE, PLLC**  
431 South Seventh Street, Suite 2415  
Minneapolis, Minnesota 55415  
(612) 375-0400  
sortland@sortland.com

/s/ Grant G. Alvine

---

**Grant G. Alvine (So. Dak. # 18)**  
**ALVINE LAW FIRM, LLP**  
809 W. 10<sup>th</sup> Street  
Sioux Falls, SD 57104  
(605) 275-0808  
grant@alvinelaw.com

**ATTORNEYS FOR PLAINTIFF**

STATE OF SOUTH DAKOTA )  
:SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,

14CIV23-000350

Plaintiff,  
v.

Judge Carmen Means

GREG GIBSON, individually; JOAN  
GIBSON, individually, and GIBSON  
FAMILY LIMITED PARTNERSHIP, a South  
Dakota Limited Partnership; ROBERT M.  
RONAYNE, and RONAYNE LAW OFFICE,  
P.C.,

SUBPOENA DUCES TECUM  
LEE HENDRICKS, PsyD

Defendants.

TO : Lee Hendricks, PsyD, Firefly Counseling, 2013 Willow Creek Drive, Suite 2B,  
Watertown, SD 57201

You are commanded to produce and permit inspection and copying of the listed documents or objects at Alvine Law Office, LLP, 809 W. 10<sup>th</sup> Street, Sioux Falls, SD 57104 or provide a copy to Sortland Law Office, PLLC, 431 South Seventh Street, Suite 2415, Minneapolis MN 55415, on January 15, 2025 at 8:00 a.m., and in the manner required by SDCL 15-6-45(a). As an alternative, you may produce the documents to counsel in pdf copies of all documents via a Dropbox link that will be set up upon your request. Please contact the undersigned counsel, Paul A. Sortland, to set up this Dropbox link.

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**YOU SHOULD CONSIDER CONTACTING AN ATTORNEY REGARDING YOUR OBLIGATIONS AND RIGHTS.**

**THIS SUBPOENA IS GOVERNED BY HIPAA. The attorney for the person who is the subject of the information about this request has been notified so that she has a chance to object to the disclosure or seek a qualified protective order for the information from the court.**

For the purpose of this Subpoena, the following definitions and instructions shall apply:

1. The term DOCUMENT shall mean the original and any copy of any written, typed, printed, recorded or graphic matter of any kind, however produced, including but not limited to letters or other correspondence, telegrams, memoranda, reports, notes, summaries, tabulations, work papers, cost sheets, canceled checks, financial reports and statements, motion picture films, bookkeeping and accounting records of all types, photographs, advertisements, tape recordings, video or voice calls, voice mail, micro film, other data compilations, including digital data, and the memory units containing data, emails, electronic calendars, text messages, electronic chat messages, and chat messages, saved files, transcripts, downloads, remote data storage, Zoom, Microsoft, Cisco WebEx, Cloud and any other facilities or companies used for data hosting and storage.

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#### SCHEDULE A

1. All medical records from January 1, 2018 to present date, for Delores Gibson within the possession or control of Firefly Counseling.
2. All billings from January 1, 2018 to present date, for Delores Gibson within the possession or control of Firefly Counseling.

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/s/ Paul A. Sortland

---

**Paul A. Sortland (MN Lic. #103573)**  
**SORTLAND LAW OFFICE, PLLC**  
431 South Seventh Street, Suite 2415  
Minneapolis, Minnesota 55415  
(612) 375-0400  
sortland@sortland.com

/s/ Grant G. Alvine

---

**Grant G. Alvine (So. Dak. # 18)**  
**ALVINE LAW FIRM, LLP**  
809 W. 10<sup>th</sup> Street  
Sioux Falls, SD 57104  
(605) 275-0808  
grant@alvinelaw.com

**ATTORNEYS FOR PLAINTIFF**

## AFFIDAVIT OF SERVICE

**EXHIBIT**  
**2**

**IN CIRCUIT COURT THIRD JUDICIAL CIRCUIT  
IN AND FOR  
CODINGTON COUNTY, STATE OF SOUTH DAKOTA**

Case no. 14CIV23-000350

MICHAEL A. GIBSON,	)
Plaintiff,	)
	)
	)
Vs.	)
	)
GREG GIBSON, individually; JOAN GIBSON,	)
individually, and GIBSON FAMILY LIMITED	)
PARTNERSHIP, a South Dakota Limited	)
Partnership; ROBERT M. RONAYNE, and	)
RONAYNE LAW OFFICE, P.C.,	)
Defendants.	)

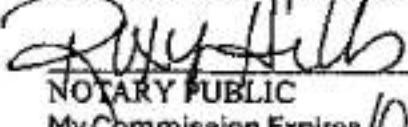
I, Brooke Baily, being duly sworn upon, depose and states the following: I served Lee Hendricks, PsyD, Firefly Counseling, 2013 Willow Creek Drive, Suite 2B, Watertown, SD 57201, personally by delivering a true copy of the SUBPOENA DUICES TECUM LEE HENDRICKS. PsyD in reference to the above matter to Lee Hendricks, PsyD at Firefly Counseling, 2013 Willow Creek Drive, Suite 2B, Watertown, SD 57201 on 11-18-2024 at 9:20 AM;

Description: Age: 40's, Sex: M, Race: W, Height: 5'9", Weight: 270 lbs, Hair: Brown

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

  
 BROOKE BAILY, PROCESS SERVER

Subscribed and Sworn to before me on the 19<sup>th</sup> day of November 2024 in Codington County, State of South Dakota

  
 NOTARY PUBLIC

My Commission Expires 10/24/2028



## AFFIDAVIT OF SERVICE

IN CIRCUIT COURT THIRD JUDICIAL CIRCUIT  
IN AND FOR  
CODINGTON COUNTY, STATE OF SOUTH DAKOTA

Case no. 14CTV23-000350

MICHAEL A. GIBSON, )  
Plaintiff, )  
                          )  
                          )  
                          )  
Vs.                    )  
                          )  
                          )  
GREG GIBSON, individually; JOAN GIBSON, )  
individually, and GIBSON FAMILY LIMITED )  
PARTNERSHIP, a South Dakota Limited )  
Partnership; ROBERT M. RONAYNE, and )  
RONAYNE LAW OFFICE, P.C., )  
Defendants.            )

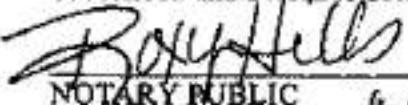
I, Brooke Baily, being duly sworn upon, depose and states the following: I served DR. SARAH A. REIFFENBERGER, Prairie Lakes Brown Clinic, personally by delivering a true copy of the AMENDED SUBPOENA DUCES TECUM AMERICAN NATIONAL INSURANCE in reference to the above matter to DR. SARAH A. REIFFENBERGER c/o Sarah Engels, LPN at Prairie Lakes Brown Clinic Northridge, 511 14th Ave NE, Watertown, SD 57201 on 11-18-2024 at 9:40 AM;

Description: Age: 20's, Sex: F, Race: W, Height: 5'5", Weight: 150 lbs, Hair: Brown

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

  
\_\_\_\_\_  
BROOKE BAILLY, PROCESS SERVER

Subscribed and sworn to before me on the 19<sup>th</sup> day of November, 2024 in Codington County, State of South Dakota

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires 12/14/2028



## AFFIDAVIT OF SERVICE

IN CIRCUIT COURT THIRD JUDICIAL CIRCUIT  
IN AND FOR  
CODINGTON COUNTY, STATE OF SOUTH DAKOTA

Case no. 14CIV23-000350

MICHAEL A. GIBSON, )  
Plaintiff, )  
 )  
 )  
Vs. )  
 )  
GREG GIBSON, individually; JOAN GIBSON, )  
individually, and GIBSON FAMILY LIMITED )  
PARTNERSHIP, a South Dakota Limited )  
Partnership; ROBERT M. RONAYNE, and )  
RONAYNE LAW OFFICE, P.C., )  
Defendants. )

I, Brooke Baily, being duly sworn upon, depose and states the following: I served KEEPER OF THE RECORDS: Prairie Lakes Brown Clinic Main, 401 9th Avenue NW, Building A, Watertown, SD 57201 personally by delivering a true copy of the SUBPOENA DUCES TECUM PRAIRIE LAKES BROWN CLINIC-MAIN in reference to the above matter to Jodi LeBlanc, HIM Specialist at KEEPER OF THE RECORDS: Prairie Lakes Brown Clinic Main, 401 9th Avenue NW, Building A, Watertown, SD 57201. on 11-18-2024 at 12:30PM;

Description: Age: 40's, Sex: F, Race: W, Height: sitting, Weight: 240 lbs., Hair: Blonde

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.


 BROOKE BAILY, PROCESS SERVER

Subscribed and Sworn to before me on the 19<sup>th</sup> day of November, 2024, in Codington County, State of South Dakota

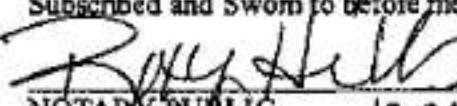
  
NOTARY PUBLIC  
My Commission Expires 10/24/2028



Exhibit 2 Page 4 of 6

Gibson App. 00047

## AFFIDAVIT OF SERVICE

IN CIRCUIT COURT THIRD JUDICIAL CIRCUIT  
IN AND FOR  
CODINGTON COUNTY, STATE OF SOUTH DAKOTA

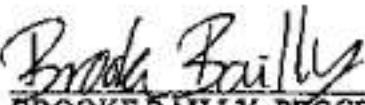
Case no. 14CIV23-000350

MICHAEL A. GIBSON, )  
Plaintiff, )  
                          )  
                          )  
Vs. )  
                          )  
                          )  
GREG GIBSON, individually; JOAN GIBSON, )  
individually, and GIBSON FAMILY LIMITED )  
PARTNERSHIP, a South Dakota Limited )  
Partnership; ROBERT M. RONAYNE, and )  
RONAYNE LAW OFFICE, P.C., )  
Defendants. )

I, Brooke Baily, being duly sworn upon, depose and states the following: I served KEEPER OF THE RECORDS: Prairie Lakes Brown Clinic Northridge, 511 14th Avenue NE, Watertown, SD 57201, personally by delivering a true copy of the SUBPOENA DUCES TECUM PRAIRIE LAKES BROWN CLINIC NORTHRIDGE in reference to the above matter to Sarah Engels, LPN at Prairie Lakes Brown Clinic Northridge, 511 14th Ave NE, Watertown, SD 57201 on 11-18-2024 at 9:40 AM;

Description: Age: 20's, Sex: F, Race: W, Height: 5'5", Weight: 150 lbs., Hair: Brown

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

  
\_\_\_\_\_  
BROOKE BAILY, PROCESS SERVER

Subscribed and Sworn to before me on the 19<sup>th</sup> day of November 2024 in Codington County, State of South Dakota

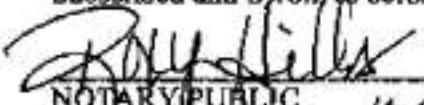
  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires 10/21/2028



EXHIBIT 2 Page 3 of 6

Gibson App. 00048

**AFFIDAVIT OF SERVICE**

**IN CIRCUIT COURT THIRD JUDICIAL CIRCUIT  
IN AND FOR  
CODINGTON COUNTY, STATE OF SOUTH DAKOTA**

Case no. 14CIV23-000350

MICHAEL A. GIBSON,  
Plaintiff,  
Vs.  
GREG GIBSON, individually; JOAN GIBSON,  
individually, and GIBSON FAMILY LIMITED  
PARTNERSHIP, a South Dakota Limited  
Partnership; ROBERT M. RONAYNE, and  
RONAYNE LAW OFFICE, P.C.,  
Defendants.

I, Brooke Baily, being duly sworn upon, depose and states the following: I served KEEPER OF THE RECORDS: Prairie Lakes Hospital, 401 9th Avenue NW, Building A, Watertown, SD 57201., personally by delivering a true copy of the SUBPOENA DUCES TECUM PRAIRIE LAKES HOSPITAL in reference to the above matter to KEEPER OF THE RECORDS: Prairie Lakes Hospital, 401 9th Avenue NW, Building A, Watertown, SD 57201. C/O Katie Born, HIM Specialist on 11-18-2024 at 12:05 PM;

Description: Age: 30's. Sex: F. Race: W. Height: 5'4". Weight: 180 lbs. Hair: Blond c

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

~~PROOF OF SERVICE~~  
BROOKE BAILEY, PROCESS SERVER

Subscribed and Sworn to before me on the 19<sup>th</sup> day of November 2024 in Codington County, State of South Dakota.

NOTARY PUBLIC  
My Commission Expires 10-24-2028



## AFFIDAVIT OF SERVICE

IN CIRCUIT COURT THIRD JUDICIAL CIRCUIT  
IN AND FOR  
CODINGTON COUNTY, STATE OF SOUTH DAKOTA

Case no. 14CIV23-000350

MICHAEL A. GIBSON, )  
Plaintiff, )  
                          )  
                          )  
                          )  
Vs. )  
                          )  
                          )  
GREG GIBSON, individually; JOAN GIBSON, )  
individually, and GIBSON FAMILY LIMITED )  
PARTNERSHIP, a South Dakota Limited )  
Partnership; ROBERT M. RONAYNE, and )  
RONAYNE LAW OFFICE, P.C., )  
Defendants. )

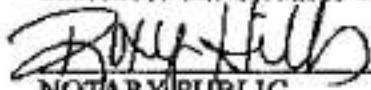
I, Brooke Baily, being duly sworn upon, depose and states the following: I served KEEPER OF THE RECORDS: Sanford Health Watertown Clinic, 901 4th Street NW, Watertown, SD 57201, personally by delivering a true copy of the SUBPOENA DUCES TECUM SANFORD HEALTH WATERTOWN CLINIC in reference to the above matter to KEEPER OF THE RECORDS: Sanford Health Watertown Clinic, 901 4th Street NW, Watertown, SD 57201 C/O Jennifer Briggs, Clinical Lead on 11-18-2024 at 12:00 PM;

Description: Age: 40's, Sex: F, Race: W, Height: 5'4", Weight: 230 lbs., Hair: Blonde

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

  
\_\_\_\_\_  
BROOKE BAILY, PROCESS SERVER

Subscribed and Sworn to before me on the 19<sup>th</sup> day of November 2024 in Codington County, State of South Dakota

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires 04/2028



**SORTLAND LAW OFFICE, PLLC**  
**431 SOUTH SEVENTH STREET, SUITE 2415**  
**Minneapolis, Minnesota 55415**

---

TELEPHONE (612) 375-0400

**PAUL A. SORTLAND**  
**ATTORNEY AT LAW**  
**[sortland@sortland.com](mailto:sortland@sortland.com)**

**Certified Civil Trial Specialist by MSBA**  
**Admitted in Minnesota and North Dakota**  
**[www.sortland.com](http://www.sortland.com)**

May 7, 2024

**EXHIBIT**

**A**

Mr. Grant Alvine  
Alvine Law Office, LLP  
809 W. 10<sup>th</sup> Street  
Sioux Falls, SD 57104

VIA E-MAIL ONLY: [grant@alvinelaw.com](mailto:grant@alvinelaw.com)

Re: Gibson v. Ronayne, et al.

Dear Grant:

Enclosed with this letter you will find new subpoenas we have prepared. This time we added the language required by SDCL 15-6-45(a). We have also learned that the witness fee is \$20.00. I can send these to the appropriate sheriff's offices for service on the deponents. I would ask you to review these, and if appropriate, serve them through the e-file system to opposing counsel. If there is anything else we need, please let me know.

Please review these briefly and confirm that they are correct at least as to form.

I am enclosing the following subpoenas:

- a. Schwan Financial Group.
- b. First Premier Bank.
- c. Mark Weber Agency.
- d. Neu Real Estate.
- e. American National Insurance.
- f. The UPS Store.
- g. Miller Realty.

Mr. Grant Alvine

May 7, 2024

Page 2

h. Dacotah Bank.

I have conformed your signature to these subpoenas, pending your approval. If you have any questions or concerns, please let me know.

Yours very truly,

*Paul A. Sordland*

Paul A. Sordland

PAS/hjn

Enclosures

cc: Ms. Olivia Jolley (Via E-mail Only: Olivia@alvinelaw.com)  
Mr. Michael Gibson (Via E-mail Only: biggib@itctel.com)

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

IN CIRCUIT COURT

THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,

14CTV23-000350

Plaintiff

Judge Carmen Means

v.

GREGORY GIBSON, individually; JOAN GIBSON, individually, and GIBSON FAMILY LIMITED PARTNERSHIP, a South Dakota Limited Partnership; ROBERT M. RONAYNE, and RONAYNE LAW OFFICE, P.C.,

AFFIDAVIT OF PAUL A. SORTLAND,  
MARCH 4, 2025, REGARDING MOTION  
TO DISMISS, ET AL.

Defendants.

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

Paul A. Sortland, being first duly sworn, deposes and states as follows:

1. I am one of the attorneys for the Plaintiff, Michael A. Gibson, and the Michael & Tara Gibson Living Trust.
2. I have been practicing law since graduation from the University of Minnesota Law School in 1978. I have practiced law continuously since then, in a variety of litigation. However, for the past twenty years, my focus has been on professional negligence, analyzing and preparing claims against other legal professionals for negligence and wrongful actions.
3. I am certified as a Civil Trial Specialist by the Litigation Section of the Minnesota State Bar Association, and was first certified on June 1, 1990.

4. I have previously been an Adjunct Professor of Business Law at Moorhead State University. I have been named a "Super Lawyer" by *Minnesota Law & Politics*, and have been a Super Lawyer since 2006. I am rated "AV" by Martindale Hubble. My practice of law includes serving as resident manager of the Fargo office of Qualley Larson & Jones, headquartered in Sioux City, with offices also in Sioux Falls and elsewhere. I was later a partner and chair of business litigation of Messerli & Kramer, one of the top law firms in Minneapolis. I am a member of the Minnesota Association for Justice, the Minnesota State Bar Association, and the State Bar Association of North Dakota.
5. I am admitted to practice in the state and federal courts of both Minnesota and North Dakota. I am also admitted to the Eighth Circuit Court of Appeals and to the United States Supreme Court.
6. I appear in this action on a pro hac vice basis with Mr. Grant Alvine serving as local counsel.
7. While I have been admitted to pursue this case on behalf of our clients on a pro hac vice basis, in that capacity, I do not have filing privileges through the Odyssey E-file System as a South Dakota resident attorney would. Everything we file has to be submitted by Mr. Alvine's office. While this is a little slow sometimes, I do appreciate the ability of Mr. Alvine to review my work before it is submitted to the Court and counsel.
8. When I prepared the first set of subpoenas, I sent those to Mr. Alvine's office with a letter of May 7, 2024, attached as Exhibit A, which indicated we would be first filing before serving the subpoenas. Mr. Alvine's office mistakenly informed me that we do not need to file or serve the subpoena before serving the witness. Consequently, we sent

those subpoenas directly to the sheriffs' offices or to private process servers. Email, May 7, 2024, attached as Exhibit B.

9. After the complaints of Mr. Schoenbeck, we discovered that South Dakota law was, indeed, the same as Minnesota, and we were required to serve the subpoenas after first filing them with the Court.
10. A copy of Mr. Alvine's email of May 30, 2024, is attached as Exhibit C, indicating his acknowledgment of the mistake. Since then, we have always filed these subpoenas so that they are available to opposing counsel, before causing them to be served.
11. There really were no problems with the depositions, subpoenas, and document production until we got to the subpoenas served upon Prairie Lakes Health facilities, and related entities. Before this time, while there may have been minor errors, we proceeded along and seemed to work out minor disputes with opposing counsel.
12. Now, it appears that GFLP and Evans are complaining about the subpoenas served on Prairie Lakes and related entities. These were served through the South Dakota Odyssey Court System and filed in this case, making them available to the other attorneys and the public.
13. These were served on November 15, 2024. Copies of these subpoenas served upon Prairies Lakes Hospital, Prairie Lakes Brown Clinic-Main, Prairie Lakes Brown Clinic-Northridge, are attached as Exhibits D, E, and F, respectively.
14. We did not receive anything from the other deponents served on November 15, including Lee Hendricks, and Dr. Sarah Reiffenberger, and Sanford Watertown Clinic. These are attached as Exhibits G, H, and I.

15. Exhibits J, K, and L, are true and correct copies of the Affidavits of Service, signed by Brooke Bailly, the process server we hired, showing that she served the Prairie Lakes entities on November 18, 2024.
16. Attached as Exhibit M is a true and correct copy of pertinent portion of the Case Summary, printed on February 28, 2025.
17. When we received the call from Prairie Lakes Health System, on December 2, a woman identified as Jodi, talked to my secretary, Heather, inquiring about the Dropbox services. It is my understanding that Heather provided Jodi with a Dropbox link by email. Attached as Exhibit N is email correspondence between Heather and Jodi LeBlanc, December 2, 2024.
18. However, on December 3, 2024, we received the files from the hospital by email through a Zix secure message system. Copies of two of the several emails we received from Jodi LeBlanc, and later from Jeanne Schick, are attached as Exhibits O and P. We received several of these secure emails during the day on December 3, 2024.
19. I never spoke with Jodi LeBlanc. I do not believe my secretary, Heather, did anything other than comply with Ms. LeBlanc's requests. The objections that we had received from Mr. Evans earlier were disregarded as no date for a hearing on the objection had ever been scheduled. In addition, of course, Mr. Evans represented Gibson Family Limited Partnership, had absolutely no legal effect, because Gibson Family Limited Partnership has no standing to object to the medical records of Delores Gibson in this case.
20. Since then, we have provided copies to opposing counsel pursuant to the rules.

21. Attached as Exhibit Q is a true and correct copy of select portions of the Deposition of Brian Rawerts, November 11, 2024.
22. Attached as Exhibit R is a true and correct copy of select portions of the Deposition of Jon Kaufman, November 11, 2024.
23. Attached as Exhibit S is a true and correct copy of Deposition Exhibit 88, an email from Michael Gibson to Schwan Financial, July 25, 2022.
24. Attached as Exhibit T is a true and correct copy of select portions of the Deposition of Joan Gibson, November 22, 2024.

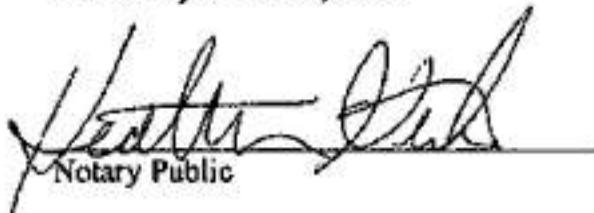
Dated at Minneapolis, Minnesota, this 4<sup>th</sup> day of March, 2025.



---

Paul A. Sortland

Subscribed and sworn to before me  
this 4<sup>th</sup> day of March, 2025.



---

Heather Janeen Nick  
Notary Public



**SORTLAND LAW OFFICE, PLLC**  
**431 SOUTH SEVENTH STREET, SUITE 2415**  
**Minneapolis, Minnesota 55415**

---

TELEPHONE (612) 375-0400

**PAUL A. SORTLAND**  
**ATTORNEY AT LAW**  
**[sortland@sortland.com](mailto:sortland@sortland.com)**

**Certified Civil Trial Specialist by MSBA**  
**Admitted in Minnesota and North Dakota**  
**[www.sortland.com](http://www.sortland.com)**

May 7, 2024

**EXHIBIT**

**A**

Mr. Grant Alvine  
Alvine Law Office, LLP  
809 W. 10<sup>th</sup> Street  
Sioux Falls, SD 57104

VIA E-MAIL ONLY: [grant@alvinelaw.com](mailto:grant@alvinelaw.com)

Re: Gibson v. Ronayne, et al.

Dear Grant:

Enclosed with this letter you will find new subpoenas we have prepared. This time we added the language required by SDCL 15-6-45(a). We have also learned that the witness fee is \$20.00. I can send these to the appropriate sheriff's offices for service on the deponents. I would ask you to review these, and if appropriate, serve them through the e-file system to opposing counsel. If there is anything else we need, please let me know.

Please review these briefly and confirm that they are correct at least as to form.

I am enclosing the following subpoenas:

- a. Schwan Financial Group.
- b. First Premier Bank.
- c. Mark Weber Agency.
- d. Neu Real Estate.
- e. American National Insurance.
- f. The UPS Store.
- g. Miller Realty.

Mr. Grant Alvine

May 7, 2024

Page 2

h. Dacotah Bank.

I have conformed your signature to these subpoenas, pending your approval. If you have any questions or concerns, please let me know.

Yours very truly,

*Paul A. Sordland*

Paul A. Sordland

PAS/hjn

Enclosures

cc: Ms. Olivia Jolley (Via E-mail Only: Olivia@alvinelaw.com)  
Mr. Michael Gibson (Via E-mail Only: biggib@itctel.com)

Heather Nick

**From:** Grant Alvine <grant@alvinelaw.com>  
**Sent:** Tuesday, May 7, 2024 4:28 PM  
**To:** Heather Nick; Paul Sortland  
**Cc:** Olivia Jolley  
**Subject:** Subpoena Duces Tecum  
**Attachments:** Subpoena Duces Tecum - Grimm's.pdf; Subpoena Duces Tecum - Plains Equipment.pdf

EXHIBIT

**B**

Paul - I have attached the copies of Subpoena Duces Tecum I have used in the past. I serve them on the Keeper of the Records for the company and the subpoena is issued in the name of the presiding judge. The Subpoena for example to Schwan Financial Group should be issued to the Keeper of the Records. I would title Subpoena Duces Tecum. The body of the subpoena appear fine with all the requests. At the bottom line I would add "Issued in the name of the Honorable Carmen Means, Judge of said Court on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

You can have them served by Sheriff with the \$20 fee. You can send the subpoenas out to the Sheriffs for Service or if they will accept an Admission of Service. Once served we will file them and serve opposing counsel in sufficient time so they can file any motion to quash.

Grant Alvines

**ALVINE LAW FIRM, LLP**  
Phone: (605) 271-8808 Fax: (605) 271-7817  
Email: grant@alvinelaw.com  
809 West 10<sup>th</sup> Street, Suite A  
Sioux Falls, SD 57104  
[www.alvinelaw.com](http://www.alvinelaw.com)



**ALVINE**  
— LAW FIRM —  
Injury Lawyers

NOTICE: This message (including any attachments) is covered by the Electronic Communication Privacy Act (18 U.S.C. § 2510 - 2021); is confidential; and may also be protected by attorney-client privilege. If you believe that it has been sent to you in error, do not read it. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, then delete it. Thank you.

Heather Nick

---

**From:** Grant Alvine <grant@alvinelaw.com>  
**Sent:** Thursday, May 30, 2024 9:43 AM  
**To:** Heather Nick; Paul Sortland  
**Cc:** Olivia Jolley; Paul Sortland  
**Subject:** RE: Gibson v. Ronayne, et al.

EXHIBIT

C

Paul - Heather and I spoke. I received a call from Mr. Lee Schoenbeck who represents Schwan Financial Group. He noted that your request would cost approximately \$10,000 and said he would be requesting the cost of production. He requested a more narrow subpoena to reduce the costs of production.

Lastly, he pointed out the law did change as it pertains to the Subpoena Duces Tecum. I have never been called on this and no other attorney since the law change has ever brought it up. But pursuant to SDCL 15-6-45(b) we are now required to send a Notice and copy of the Subpoena to all opposing parties before we send out the subpoena Duces Tecum.

Since we have already received numerous Admissions of Service I was going to send an email out to the parties that I – not you – did not comply with 15-6-45(b) and if they want I can send out a Notice with Subpoena and reserve all the Subpoena's with Admission of Service again. However if they are not going to be moving to Quash the subpoena it seems meaningless to do. If the parties waive that we can just proceed ahead. If they don't I will take care of remedying my mistake. I apologize for this and will inform the parties my habits are hard to break.

I will wait to hear from you.

Grant Alvine

**ALVINE LAW FIRM, LLP**  
Phone: (605) 275-0006 Fax: (605) 271-7817  
Email: [grant@alvinelaw.com](mailto:grant@alvinelaw.com)  
805 West 10th Street, Suite A  
Sioux Falls, SD 57104  
[www.alvinelaw.com](http://www.alvinelaw.com)



**ALVINE**  
— LAW FIRM —  
Injury Lawyers

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## Heather Nick

---

**From:** Jodi LeBlanc <Jodi.LeBlanc@prairielakes.com>  
**Sent:** Monday, December 2, 2024 4:44 PM  
**To:** Heather Nick  
**Subject:** RE: Gibson - Subpoena Production - Prairie Lakes

Thank you! Received.

I will work on dropping the information tomorrow and I will email you once complete. ☺



EXHIBIT

N

**From:** Heather Nick <heather@sortland.com>  
**Sent:** Monday, December 2, 2024 4:42 PM  
**To:** Jodi LeBlanc <Jodi.LeBlanc@prairielakes.com>  
**Cc:** Heather Nick <heather@sortland.com>; Paul Sortland <sortland@sortland.com>  
**Subject:** [EXTERNAL] Gibson - Subpoena Production - Prairie Lakes

Think Security - This message originated outside your organization. Exercise caution before clicking any links or attachments.

Dear Ms. LeBlanc:

Attached please find a Dropbox link which you can click on and copy and paste the materials into the Dropbox file. Let me know if you have any issues placing materials into the Dropbox link.

Please also let me know when the materials are placed into the Dropbox file. Thank you.

<https://www.dropbox.com/scl/fb/6itbooiydg7h1mry09jr/AGc155Los1pEFcQuYOgNGeM?rlkey=zvdxg9mqdtim9qtc0sx181px&dl=0>

**Heather J. Nick, legal secretary**  
**SORTLAND LAW OFFICE, PLLC**  
431 South Seventh Street, Suite 2415  
Minneapolis MN 55415  
(612) 376-0400  
heather@sortlandjnj.com

Heather Nick

---

**From:** Jodi LeBlanc <prairielakes.notification@zixmessagecenter.com>  
**Sent:** Tuesday, December 3, 2024 11:16 AM  
**To:** Heather Nick  
**Subject:** Electronic Medical Record zix

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---

**New Zix secure email message from Prairie Lakes Healthcare System**

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**Open Message**

To view the secure message, click Open Message.

The secure message expires on Dec 24, 2024 @ 05:16 PM (GMT).

Do not reply to this notification message; this message was auto-generated by the sender's security system. To reply to the sender, click Open Message.

If clicking Open Message does not work, copy and paste the link below into your Internet browser address bar.

<https://web1.zixmail.net/s/e?b=prairielakes&>

EXHIBIT

O

Heather Nick

---

**From:** Jeanne Schick <prairielakes.notification@zixmessagecenter.com>  
**Sent:** Tuesday, December 3, 2024 2:58 PM  
**To:** Heather Nick  
**Subject:** zix re: records

---

## New Zix secure email message from Prairie Lakes Healthcare System

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**Open Message**

To view the secure message, click Open Message.

The secure message expires on Dec 24, 2024 @ 08:57 PM (CST).

EXHIBIT

**P**

Do not reply to this notification message; this message was auto-generated by the sender's security system. To reply to the sender, click Open Message.

If clicking Open Message does not work, copy and paste the link below into your Internet browser address bar.

<https://web1.zixmail.net/s/e?b=prairielakes&>

---

**From:** Lee Schoenbeck  
**Sent:** Thursday, May 30, 2024 9:18 AM  
**To:** grant@alvinelaw.com  
**Cc:** Lee Schoenbeck; Jennifer Frederick  
**Subject:** Schwan Financial Group LLC subpoena

Grant:

Good talking to you yesterday. Let me summarize:

- 1- SDCL 15-8-45(b) has a pre-service requirement, that I understand was not complied with:  
"Before a subpoena commanding the production of documentary evidence is served on the person to whom it is directed, a notice and copy of the subpoena must be served on each party to the matter pending."
- I understand that this was not done, and that you will now be doing it. Send us a copy and then a new subpoena with an admission of service and I will have it signed for you. In the meantime, in light of not complying with the statute and giving the advance notice to the other interested parties, we understand that this subpoena does not need to be answered. Please correct me if I am wrong.
- 2- The statute also provides that we can have the court require advancement of the costs of producing the requested materials. Depending on the scope of the subpoena, you need to send a check for between 5 and 10 k\$. Which brings me to ..
- 3- Can you limit the subpoena in some reasonable fashion. Going through all twenty items, that are actually more like 100 with the sentence structure, for 8 years, is going to cost at least \$10k. Much of the material, I understand, has already been provided. If you can limit it, we can shrink the advancement to closer to the \$5k. If not, we will diligently and carefully fully comply with the subpoena – when it is served after proper notice. Lee

Lee Schoenbeck, Attorney  
Schoenbeck & Erickson, PC  
Redlin Art Center  
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Heather Nick

---

**From:** Grant Alvine <grant@alvinelaw.com>  
**Sent:** Thursday, May 30, 2024 9:43 AM  
**To:** Heather Nick; Paul Sortland  
**Cc:** Olivia Jolley; Paul Sortland  
**Subject:** RE: Gibson v. Ronayne, et al.

EXHIBIT

C

Paul - Heather and I spoke. I received a call from Mr. Lee Schoenbeck who represents Schwan Financial Group. He noted that your request would cost approximately \$10,000 and said he would be requesting the cost of production. He requested a more narrow subpoena to reduce the costs of production.

Lastly, he pointed out the law did change as it pertains to the Subpoena Duces Tecum. I have never been called on this and no other attorney since the law change has ever brought it up. But pursuant to SDCL 15-6-45(b) we are now required to send a Notice and copy of the Subpoena to all opposing parties before we send out the subpoena Duces Tecum.

Since we have already received numerous Admissions of Service I was going to send an email out to the parties that I – not you – did not comply with 15-6-45(b) and if they want I can send out a Notice with Subpoena and reserve all the Subpoena's with Admission of Service again. However if they are not going to be moving to Quash the subpoena it seems meaningless to do. If the parties waive that we can just proceed ahead. If they don't I will take care of remedying my mistake. I apologize for this and will inform the parties my habits are hard to break.

I will wait to hear from you.

Grant Alvine

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**ALVINE**  
— LAW FIRM —  
Injury Lawyers

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**From:** Ed Evans  
**To:** Paul Sortland  
**Cc:** grant@alkinelaw.com; sander.morsehead@woodsfuller.com; Jake Schneider; Jack Hieb; Zach Peterson; Ryan Bedd; Ed Evans  
**Subject:** Gibson v. Gibson, et al  
**Date:** Friday, August 23, 2024 11:27:06 AM  
**Attachments:** Letter from Dr. Reiffenberger 8.16.24.pdf

---

Paul,

Attached please find a letter from Delores Gibson's primary care physician regarding the health risk of her being deposed. Please confirm that you still intend to go forward with her deposition so that we may file a Motion for Protective Order. The purpose of this email is to fulfill the "meet and confer" requirements of Rule 37(a)(2).

Best regards.

Edwin E. Evans  
Evans Haigh & Arndt LLP  
225 East 11<sup>th</sup> Street, Suite 201  
PO Box 2790  
Sioux Falls, SD 57101-2790

Direct Dial: (605) 906-8901  
Phone: (605) 275-9599  
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Email: [eevans@ehalawyers.com](mailto:eevans@ehalawyers.com)



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EXHIBIT

6

Gibson App. 00068

## YOUR HEALTH : OUR MISSION

08/16/2024

Delores Gibson  
C/O Leann Swenson 516 N LAKE DR  
WATERTOWN SD 57201-6817

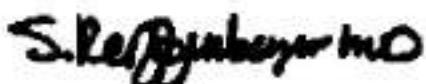
DOB: 12/06/1940

To whom it may concern:

Delores Gibson is an 83-year-old female whom I have been seeing since 7/6/2018. Delores has moderate Alzheimer's dementia that she has been taking medication for since 2021. She is currently living in an assisted living as she cannot live independently. She is in a memory unit. The patient does get agitated fairly easily and is on medication to help deal with the agitation. Because of her poor memory, I do not think that she should be deposed or testify in a court of law, as she would not be able to give adequate testimony. Even though she is on medication to help with her agitation, the stress of being deposed, or testifying, could increase her agitation.

Delores has also had a large MI. The MI was in September 2018. This heart attack left her with an ischemic cardiomyopathy, which means that her heart does not function well. I think the stress of having to testify or be deposed, for this patient, could cause further stress on her heart and damage her health.

Sincerely,



SARAH A. REIFFENBERGER, MD  
FAMILY MEDICINE

Main: 506 First Avenue SE | Watertown, SD 57201  
Northridge: 511 Fourteenth Avenue NE | Watertown, SD 57201  
Phone: 605.886.8482 | Fax: 605.884.4300  
Appointments: 605.886.8482 | [www.prairielakes.com/brownclinic](http://www.prairielakes.com/brownclinic)



**PRAIRIE LAKES**  
Brown Clinic

**EXHIBIT**

Gibson App. 00069



## FIREFLY COUNSELING

2013 Willow Creek Drive, Suite 2B

Watertown, SD 57201

Phone: (605) 878-0376 Fax: (605) 878-0489

firefly.counseling@outlook.com

---

To: Ed Evans, Leann Swenson, et al.

From: Lee Hendricks, PsyD  
Firefly Counseling

8/22/2024

To whom it may concern:

My name is Lee Hendricks. I have worked with Ms. Delores Gibson for about nine months as of today, since 11/16/2023. I was asked to assess potential dementia due to concerns over observed memory loss. I have also been asked to provide counseling for Ms. Gibson's anxiety, which has been at least partially associated with ongoing legal stresses related to lawsuits brought forth by her son. I was initially asked to provide treatment for Ms. Gibson because events related to aforementioned court issues were causing Ms. Gibson anxiety to the extent that anxiety was exacerbating her dementia condition. She was becoming agitated and anxious enough that her son Gregory had to come to Harmony Hill at night to calm her down. One of the related events included Delores seeing one of Mr. Gibson's (who has initiated lawsuits) relatives touring the Harmony Hill Facility. I am concerned because if seeing Mr. Gibson's relatives notably increases anxiety and causes a need for Gregory to come in to calm her down at night, being deposed may reasonably be predicted to cause further issues of greater severity. International Classification of Diseases, Tenth Revision (ICD-10) diagnoses for Ms. Gibson are as follows:

**Generalized anxiety disorder, F41.1**

**Dementia in other diseases classified elsewhere, mild, with psychotic disturbance, F02.A2**

Furthermore, an even greater concern is that Mr. Gibson seeks to depose his 83 year old mother who has been diagnosed with dementia with psychosis. Aside from moral implications that simply make this potential deposition distasteful, there are legal and ethical implications which I may not be fully qualified to explain. However, the nature of her dementia condition suggests that any testimony provided in aforementioned potential deposition would foreseeably be rendered invalid. It would appear that avoiding a deposition for Ms. Gibson would be in the best interest of all involved parties.

Sincerely,

---

Lee Hendricks, PsyD

**EXHIBIT**

**2**

Gibson App. 00070

STATE OF SOUTH DAKOTA )

IN CIRCUIT COURT

: SS

COUNTY OF CODINGTON )

THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,

CIV. 23-000350

Plaintiff,

vs.

GREG GIBSON, INDIVIDUALLY, JOAN  
GIBSON, INDIVIDUALLY, AND GIBSON  
FAMILY LIMITED PARTNERSHIP, A SOUTH  
DAKOTA LIMITED PARTNERSHIP; ROBERT M.  
RONAYNE, AND RONAYNE LAW OFFICE,  
P.C.,

**AFFIDAVIT OF LEANN SWENSON**

Defendants.

STATE OF SOUTH DAKOTA )

: SS

COUNTY OF CODINGTON )

LeAnn Swenson, being first duly sworn upon her oath, states and alleges as follows:

1. I am the daughter of Delores Gibson, and sister to Michael and Greg Gibson.
2. I have been my mother's primary caregiver since my father died in 1988.
3. I have been the primary caregiver to my mother, and I have been in regular contact with my mother for the past 36 years since his death.

4. After the passing of my father, my mother continued to live on her own on the family farm. In 2016, my mom moved into Watertown, South Dakota, where she continued to live on her own.

5. From 1988 until the summer of 2022, my mom lived on her own.

6. In 2018, mom suffered a significant heart attack. She was in the intensive care unit for a substantial period of time. Ultimately, she was able to recover, but had to have a defibrillator placed to help with her weakened heart. Despite the heart attack, mom was able to go back to living on her own.

7. Other than the period of time she was hospitalized in connection with her heart attack, through the start of COVID in 2020, my mother was entirely self-sufficient. She was able to take care of herself, including showering own her own, cooking her own meals, dressing herself, doing her own laundry, and paying her own bills. In addition, mom drove and would routinely drive herself to attend gatherings with friends, go to concerts, and go to church.

8. During this time period, my mother performed all of her functions as the general partner of the Gibson Family Partnership on her own.

9. When COVID became a concern, my mother continued to live on her own, but due to concerns about the health risks of COVID, she no longer drove and no longer went out in public to get groceries or attend public gatherings. During this time, my husband and I would bring mom groceries and would visit with her, as it was very hard on her to be alone and to not see her friends and family.

10. After the concerns about COVID lessened, my mother returned to her normal active lifestyle. Since she had not driven for a period of time, I did not think it was safe for my mom to go back to driving, so I promised to take her to all of her functions, and enlisted the help of my sister-in-law and my husband to help me get mom to every function she wanted to go to.

11. In June of 2022, I noticed that mom was losing weight and that cooking was becoming harder for her. Previously, mom had talked to me about going to live at the Edgewood or Stonybrook assisted living facilities. In the beginning of June of 2022, mom brought up the possibility of moving to assisted living so that she could have someone to cook for her and more opportunity to socialize with other people. There would also be staff available to assist with daily tasks, as needed.

12. In the summer of 2022, Mom went and looked at a one-bedroom apartment at Edgewood. Mom liked Edgewood and thought it was bright and cheery. That day, she wrote a check for the deposit and we moved her in shortly after. Mom thrived at Edgewood. I continued to drive mom around so that she could go out for lunches, go to concerts, and play cards with her friends.

13. When she moved into Edgewood, mom continued to be involved in the GFLP partnership and was aware of what was occurring.

14. At the end of May 2023, mom fell and broke her hip. She had surgery and stayed in the hospital for 4 days. She had approximately 18 days of inpatient rehabilitation before being discharged back to Edgewood. Her return to Edgewood after her fall was when I noticed mom begin to struggle.

15. Once mom returned to Edgewood, we had to move her room closer to the activities, as the walk for her was too long. She also needed more care and assistance with her daily activities. During this time, I noticed that mom would have trouble remembering where her room was and became more agitated easier. She began to have issues with the staff and became very irritable. She expressed to me that she was scared to be alone and developed trust issues.

16. By September 2023, mom's dementia had progressed considerably. We began having discussions with Edgewood staff about relocating mom to a memory care unit which would offer her more care.

17. In October 2023, after touring the Village Harmony Hill and speaking with residents, I decided that mom would be better served moving to the memory care unit at the Village.

18. Mom's transition to the Village was difficult. She became more agitated and did not know where she was. She was frightened, confused, and wanted to leave. I would visit her daily but would also receive calls throughout the day to come back and calm her down.

19. Ultimately, we hired Lee Hendricks, PsyD, the counselor from Firefly Counseling service to evaluate mom and help us get her settled. Dr. Hendricks prescribed mom Seroquel, which helped substantially and allowed her to better transition to the Village.

20. Once she settled in, mom appeared to be back to her old self. She still had instances where her memory would fail her, but, for the most part, she was lucid and coherent.

21. Over the last six to eight months, I visited mom on almost a daily basis. During this time, I observed my mother's health decline significantly. She no longer dresses herself. She cannot use a phone, operate the TV, brush her teeth, or put in her hearing aids. She also experiences incontinence issues. There are times that mom does not recognize where she is and there have been a few times where she does not recognize my husband.

22. As mom's dementia gets worse, she gets more agitated and cries over her frustrations.

23. More recently, on August 23, 2024, mom fell again and broke her shoulder. She is currently on pain killers. Since the fall, mom has trouble talking, eating, and drinking. She does not respond or engage when spoken to.

24. Despite her decline, until her recent fall, there were periods where mom was still lucid and coherent.

25. Not only have I witnessed my mom age and decline physically and mentally, but I have first hand knowledge of the emotional stress and heartbreak she has endured as a result of my brother and her son, Mike Gibson.

26. Despite the numerous lawsuits filed by Mike, my mother told me that she wants nothing more than to have a relationship with Mike's children and their children. However, on numerous occasions, my mother has told me that she is also frightened of Mike.

27. Every time Mike has visited mom over the past years, my mom has called me and I have had to go and calm her down or stay the night with her so that she feels safe.

28. I have been by my mom's side for the past 36 years. I have been primarily responsible for taking her to her medical appointments and she has also entrusted me as her Power of Attorney (POA), with Greg. Nobody knows my mom as well as me and nobody has spent more time with her over the years. I have witnessed first-hand the hurt and destruction Mike and Tana Gibson have caused her. I have witnessed the toll that this lawsuit has taken on her. She cries whenever it is brought up. I know my mom does not have a lot of life left, but Mike has put her through enough and she deserves to spend her remaining time in peace, instead of being subjected to more harassment from her son.

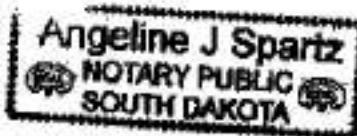
29. My mom and dad worked hard to grow the farm long before Mike, Greg, or me were born. Mom did not have to give anything to any of her kids, but she did out of her kindness and generosity. Mike has returned her generosity with greed and turmoil; and yet, continues to claim ignorance with respect to why mom refused to do any business with him.

Further affiant sayeth not.

Dated at Watertown, South Dakota, this 12<sup>th</sup> day of September, 2024.

*LeAnn Swenson*  
LeAnn Swenson

Subscribed and sworn before me this 12 day of September, 2024.



*Angeline Spartz*  
Notary Public, South Dakota  
My Commission expires: 4/23/28

**CERTIFICATE OF SERVICE**

The undersigned, one of the attorneys for Defendant Gibson Family Limited Partnership, hereby certifies that a true and correct copy of the foregoing "Affidavit of LeAnn Swenson" was served via Odyssey File & Serve upon:

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Minneapolis, MN 55415  
sortland@sortland.com

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*Attorneys for Defendants Greg Gibson and Joan Gibson*

Jack H. Hieb  
Zachary W. Peterson  
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jhielb@rwwsh.com  
zpeterson@rwwsh.com  
*Attorneys for Defendants Robert M. Ronayne and Ronayne Law Office, P.C.*

on this 13<sup>th</sup> day of September, 2024.

/s/ Edwin E. Evans  
Edwin E. Evans

# **SORTLAND LAW OFFICE, PLLC**

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**Minneapolis, Minnesota 55415**

---

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August 27, 2024

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Mr. Ed Evans  
Evans, Haigh, & Arndt, LLP  
225 East 11<sup>th</sup> Street, Suite 201  
P.O. Box 2790  
Sioux Falls, SD, 57101-2790  
VIA E-MAIL ONLY: [eevans@ehalawyers.com](mailto:eevans@ehalawyers.com)

Re: Gibson v. Gibson, et al. - Court File No. 14CIV23-000350

Dear Counsel:

As you may have surmised, we are continuing the depositions of Delores Gibson and LeAnn Swenson, previously scheduled for September 12, to an unspecified future date. At the same

**EXHIBIT**

**7**

Gibson App. 00079

Counsel  
August 27, 2024  
Page 2

time, please give me several dates in September and October that your clients would be available for depositions. Thank you for your attention to this matter.

Yours very truly,

*Paul A. Sortland*

Paul A. Sortland

PAS/hjn

cc: Mr. Grant Alvine (Via E-mail Only: grant@alvinelaw.com)  
Client (Via E-mail Only)

**From:** Firefly Counseling  
**To:** Ryan.Redd  
**Subject:** Re: Gibson v. Gibson, et al. - Deposition of Lee Hendricks, PsyD  
**Date:** Wednesday, January 6, 2025 9:20:43 AM  
**Attachments:** image004.png  
image003.png  
OutlookStamps.png

**EXHIBIT  
11**

Thank you for the heads up. I was served with a subpoena today to produce the records and have until 1/14/25 to do it per the court order. Please let me know as soon as you hear back about your objection so I know what the court tells me I have to do. I obviously would prefer not to give records that she does not want given, but will have to follow court orders. Thanks again.

Dr. Lee Hendricks, PsyD  
**FIREFLY Counseling**  
firefly.counseling@outlook.com

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---

**From:** Ryan Redd <rredd@ehalawyers.com>  
**Sent:** Monday, January 6, 2025 4:21 PM  
**To:** firefly.counseling@outlook.com <firefly.counseling@outlook.com>  
**Cc:** Ed Evans <eevans@ehalawyers.com>; Ashley Hoyt <ahoyt@ehalawyers.com>; sortland@sortland.com <sortland@sortland.com>; Jake.Schneider@woodsfuller.com <Jake.Schneider@woodsfuller.com>; Zach Peterson <zpeterson@nwwsh.com>; Jack Hieb <jhieb@nwwsh.com>; grant@alvinelaw.com <grant@alvinelaw.com>; abigail@alvinelaw.com <abigail@alvinelaw.com>; heather@sortland.com <heather@sortland.com>; Sander.Morehead@woodsfuller.com <Sander.Morehead@woodsfuller.com>  
**Subject:** RE: Gibson v. Gibson, et al. - Deposition of Lee Hendricks, PsyD

Good afternoon.

It has been brought to our attention that Plaintiff's counsel intends to serve another subpoena duces tecum on Dr. Hendricks for Delores Gibson's medical records and bills. We have already objected to the Plaintiff's prior subpoena duces tecum, which sought the exact same material, and intend to object to the most recent subpoena, as well. I am bringing this to your attention so that you are aware of Ms. Gibson's objection and to ensure that no records are produced until the Court has had an opportunity to rule on the pending (and forthcoming) motion to quash and for a protective order.

If you have any questions, please do not hesitate to contact me.

Best regards,

Ryan Redd

Partner

Evans Haigh & Arndt LLP

225 E. 11<sup>th</sup> Street, Suite 201

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**From:** Ryan Redd

**Sent:** Monday, November 18, 2024 3:40 PM

**To:** [firefly.counseling@outlook.com](mailto:firefly.counseling@outlook.com)

**Cc:** Ed Evans <[eevans@ehalawyers.com](mailto:eevans@ehalawyers.com)>; Ashley Hoyt <[ahoyt@ehalawyers.com](mailto:ahoyt@ehalawyers.com)>;

[sortland@sortland.com](mailto:sortland@sortland.com); [Jake.Schneider@woodsfuller.com](mailto:Jake.Schneider@woodsfuller.com); Zach Peterson

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[abigail@alvinelaw.com](mailto:abigail@alvinelaw.com); [heather@sortland.com](mailto:heather@sortland.com); [Sander.Morehead@woodsfuller.com](mailto:Sander.Morehead@woodsfuller.com)

**Subject:** Gibson v. Gibson, et al. - Deposition of Lee Hendricks, PsyD

Good afternoon,

This firm represents the Gibson Family Limited Partnership in the above-referenced matter. It has come to our attention that Plaintiff's counsel has issued a subpoena for Dr. Hendricks' testimony and a subpoena duces tecum to Dr. Hendricks for Delores Gibson's medical records and bills. At this time, I do not believe such subpoena has been served upon Dr. Hendricks. However, I wanted to inform you that we have filed the attached Motion to Quash the subpoena for medical records and bills and have requested the Court enter a protective order to ensure that Delores' privileged communications and rights under HIPAA are protected. I am sure you had the same concerns about patient-psychiatrist confidentiality and HIPAA. On this basis, we will be objecting to any inquiry of Dr. Hendricks during his deposition tomorrow that is not directly related to his letter dated August 22, 2024.

Please feel free to call me if you have any questions.

Best regards,

Ryan Redd

**Ed Evans**

---

**From:** Paul Sortland <sortland@sortland.com>  
**Sent:** Wednesday, November 20, 2024 9:10 AM  
**To:** Ed Evans  
**Cc:** Ryan Redd; Grant Alvine; Ashley Hoyt; Heather Nick; Paul Sortland  
**Subject:** RE: Gibson - protective order

Sure. That may be the prudent thing to do. Can we start the deposition of LeAnn, then, at 9 or 10 am? Please advise.

**Paul A. Sortland, Attorney at Law**  
**SORTLAND LAW OFFICE, PLLC**  
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**From:** Ed Evans <eevans@ehalawyers.com>  
**Sent:** Wednesday, November 20, 2024 8:27 AM  
**To:** Paul Sortland <sortland@sortland.com>  
**Cc:** Ryan Redd <rredd@ehalawyers.com>; Grant Alvine <grant@alvinelaw.com>; Ashley Hoyt <ahoyt@ehalawyers.com>  
**Subject:** Re: Gibson - protective order

I will visit with LeAnn and Delores and propose sometime. But I will not be able to do so until next week. Do you want to postpone depo of Dr. Reitzenberger until I propose something?  
Sent from my iPhone

On Nov 19, 2024, at 11:55 AM, Paul Sortland <[sortland@sortland.com](mailto:sortland@sortland.com)> wrote:

Gentlemen,

To hopefully resolve this issue of obtaining the medical records of Delores Gibson, please tell me what sort of protective order would be required to allow us to see her medical records. I think it's obvious that her history of treatment for dementia is at issue in this case. However, because most anything, particularly matters such as falls and serious treatments such as for the MRI suffered by Mrs. Gibson, can also exacerbate dementia, that we should be entitled to see all the medical records for the time period, 2018 to present. Please let me know your thoughts on this and any provision you think would be appropriate for a protective order. Thanks.

**Paul A. Sortland, Attorney at Law**  
**SORTLAND LAW OFFICE, PLLC**  
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Ed Evans

---

**From:** Paul Sortland <sortland@sortland.com>  
**Sent:** Wednesday, November 20, 2024 10:02 AM  
**To:** Stacy Wiebesiek; Heather Nick; Zach Peterson; Jack Hieb;  
sander.morehead@woodsfuller.com; Jake Schneider; Ryan Redd; Ed Evans  
**Cc:** Heather Nick; Grant Alvine; Abigail Jonic; Paul Sortland  
**Subject:** RE: Gibson v. Gibson depositions tomorrow and Friday in Watertown

The deposition of Dr. Reitzenberger has been continued. We will let you know when this is rescheduled. We will start with the deposition of Leann Swanson at 1pm in Watertown.

**Paul A. Sortland, Attorney at Law**  
**SORTLAND LAW OFFICE, PLLC**  
431 S. Seventh Street, Suite 2415  
Minneapolis, MN 55415  
(612) 375-0400  
[sortland@sortland.com](mailto:sortland@sortland.com)  
[www.sortland.com](http://www.sortland.com)

---

**From:** Stacy Wiebesiek <stacy@prairiereporting.com>  
**Sent:** Wednesday, November 20, 2024 7:44 AM  
**To:** Heather Nick <heather@sortland.com>; Zach Peterson <zpeterson@rwwsh.com>;  
sander.morehead@woodsfuller.com; Jake Schneider <Jake.Schneider@woodsfuller.com>  
**Cc:** Paul Sortland <sortland@sortland.com>  
**Subject:** Gibson v. Gibson depositions tomorrow and Friday in Watertown

Good morning,

I am just checking in to make sure we are still on for tomorrow and Friday in Watertown because every winter it seems like we have a couple jobs that cancel because of bad weather and no one lets us know and I don't want that happening to Marlene tomorrow morning.

She will be leaving Sioux Falls very early tomorrow morning to drive up to Watertown.

Thanks!!!



**Stacy L. Wiebesiek, RPR, CSR**  
Owner, Prairie Reporting  
Phone: 605-321-4906  
Email: [stacy@prairiereporting.com](mailto:stacy@prairiereporting.com)  
Website: [www.prairiereporting.com](http://www.prairiereporting.com)  
Address: P.O. Box 2008, Sioux Falls, SD 57101

**SORTLAND LAW OFFICE, PLLC**  
**431 SOUTH SEVENTH STREET, SUITE 2415**  
**Minneapolis, Minnesota 55415**

**EXHIBIT**  
**5**

TELEPHONE (612) 375-0400

**PAUL A. SORTLAND**  
**ATTORNEY AT LAW**  
**[sortland@sortland.com](mailto:sortland@sortland.com)**

**Certified Civil Trial Specialist by MSBA**  
**Admitted in Minnesota and North Dakota**  
**[www.sortland.com](http://www.sortland.com)**

December 2, 2024

Mr. Zachary W. Peterson  
Mr. Jack Hieb  
Richardson Law Firm  
1 Court Street  
P.O. Box 1030  
Aberdeen, SD 57402-1030  
**VIA E-MAIL ONLY: [zpeterson@rwwsh.com](mailto:zpeterson@rwwsh.com) [jhieb@rwwsh.com](mailto:jhieb@rwwsh.com)**

Mr. Sander Morehead  
Mr. Jake Schneider  
Woods, Fuller, Shultz & Smith, P.C.  
PO Box 5027  
300 South Phillips Avenue, Suite 300  
Sioux Falls, SD 57117-5027  
**VIA E-MAIL ONLY: [Sander.Morehead@woodsfuller.com](mailto:Sander.Morehead@woodsfuller.com) [Jake.Schneider@woodsfuller.com](mailto:Jake.Schneider@woodsfuller.com)**

Mr. Ed Evans  
Evans, Haigh, & Arndt, LLP  
225 East 11<sup>th</sup> Street, Suite 201  
P.O. Box 2790  
Sioux Falls, SD, 57101-2790  
**VIA E-MAIL ONLY: [eevans@ehalawyers.com](mailto:eevans@ehalawyers.com)**

Re: Gibson v. Gibson, et al. - Court File No. 14CIV23-000350

Dear Counsel:

Enclosed with this letter you will find a Stipulation for use of evidence obtained from medical records of Delores Gibson. With that in mind, we need to depose those health care providers.

Counsel  
December 2, 2024  
Page 2

It looks like we are looking at some time in January. I hope we can do this early in January, as I am going to be leaving out of the country from January 19-February 9.

I am also going to move to amend the Complaint. In addition to the previously disclosed version of the Amended Complaint, we have added a cause of action for usurpation of the Limited Partnership's interest by Greg Gibson.

I will soon be setting this on for hearing before the judge, as nobody agreed to the first Amended Complaint, and I suspect that nobody will agree to this one. If we can agree, that would save us a hearing. If you have any questions about the Stipulation, or the proposed Amended Complaint, please let me know.

Yours very truly,

*Paul A. Sordand*

Paul A. Sordand

PAS/hjn

Enclosure

cc: Mr. Grant Alvine (Via E-mail Only: [grant@alvinelaw.com](mailto:grant@alvinelaw.com))  
Ms. Abby Jonio (Via E-mail Only: [abigail@alvinelaw.com](mailto:abigail@alvinelaw.com))  
Client (Via E-mail Only)

STATE OF SOUTH DAKOTA )  
 ) :SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON, AND THE  
MICHAEL & TARA GIBSON LIVING  
TRUST,

Plaintiffs  
v.

GREGORY GIBSON, individually; JOAN  
GIBSON, individually, and GIBSON  
FAMILY LIMITED PARTNERSHIP, a South  
Dakota Limited Partnership; ROBERT M.  
RONAYNE, and RONAYNE LAW OFFICE,  
P.C., and CHAMPAYGN RANCH, INC.,

Defendants.

14CIV23-000350

Judge Carmen Means

STIPULATION REGARDING HIPAA

The parties hereby agree and stipulate that the medical records of Delores Gibson are relevant to this matter, and may be disclosed by her health care providers for the years 2010-present.

This Stipulation has been reviewed by Ed Evans, who also represents Delores Gibson in her personal capacity, and agrees that these records are relevant, and may be utilized for purposes of this litigation.

The parties agree not to distribute these medical records beyond the uses of this litigation. Permits of uses include distribution of the medical records to expert witnesses, and health consultants, all of whom must agree to return the records after the close of this litigation and any possible appeals.

Dated this \_\_\_ day of December, 2024.

---

**Paul A. Sortland (MN Lic. #103573)**  
**SORTLAND LAW OFFICE, PLLC**  
431 South Seventh Street, Suite 2415  
Minneapolis, Minnesota 55415  
(612) 375-0400  
sortland@sortland.com

---

**Grant G. Alvine (So. Dak. #18)**  
**ALVINE LAW FIRM, LLP**  
809 W. 10<sup>th</sup> Street  
Sioux Falls, SD 57104  
(605) 275-0808  
grant@alvinelaw.com

**ATTORNEYS FOR PLAINTIFF**

Dated this \_\_\_ day of December, 2024.

---

Sander J. Morehead  
Jake R. Schneider  
**WOODS, FULLER, SHULTZ & SMITH, P.C.**  
P.O. Box 5027  
300 South Phillips Ave., Suite 300  
Sioux Falls, SD 57117-5027  
(605) 336-3890  
Sander.Morehead@woodsfuller.com  
Jake.Schneider@woodsfuller.com

**ATTORNEYS FOR DEFENDANTS GREG  
AND JOAN GIBSON**

Dated this \_\_\_ day of December, 2024

---

Edwin E. Evans  
Ryan W.W. Redd  
**EVANS, HAIGH & ARNDT, L.L.P.**  
225 E. 11<sup>th</sup> Street, Suite 201  
P.O. Box 2790  
Sioux Falls, SD 57101-2790  
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[cevans@ehalawyers.com](mailto:cevans@ehalawyers.com)  
[rredd@ehalawyers.com](mailto:rredd@ehalawyers.com)

**ATTORNEYS FOR DEFENDANT GIBSON  
FAMILY LIMITED PARTNERSHIP, AND  
DELORES GIBSON, PERSONALLY**

Dated this \_\_\_ day of December, 2024.

---

Jack H. Hieb  
Zachary W. Peterson  
**RICHARDSON, WYLY, WISE, SAUCK &  
HIEB, LLP**  
One Court Street  
P.O. Box 1030  
Aberdeen, SD 57402-6310  
(605) 225-6310  
[JHieb@rwwsh.com](mailto:JHieb@rwwsh.com)  
[ZPeterson@rwwsh.com](mailto:ZPeterson@rwwsh.com)

**ATTORNEYS FOR DEFENDANTS ROBERT  
M. RONAYNE AND RONAYNE LAW  
OFFICE, P.C.**

**From:** Heather.Nick  
**To:** Zach.Peterson; Jack.High; sander.moosehead@woodstulier.com; Jake.Schreiter; Ed.Evans  
**Cc:** acaitly@chelaw.com; acaitly@lybbelow.com; Heather.Nick; Paul.Sortland  
**Subject:** Gibson v. Gibson, et al. - Court File No. 14CIV23-000350  
**Date:** Thursday, December 26, 2024 4:04:15 PM  
**Attachments:**  
Counsel-022.pdf  
2024-12-26-Notice of Motion-Amend Pleadings.pdf  
2024-12-26-Motion-Amend Pleadings.pdf  
Second Amended Complaint-2024-12-26.pdf  
Redline-Amend Complaint to Second Amended Complaint-2024-12-26.pdf  
2024-12-26-Memorandum-Support Mot to Amend Plead.pdf  
2024-12-26-10-Paul.Sortland w/Exs A-C.pdf

Dear Counsel:

Attached and being sent to you at the request of Mr. Sortland, please find the following. Mr. Sortland can be contacted directly at [sortland@sortland.com](mailto:sortland@sortland.com)

1. Correspondence from Mr. Sortland, December 26, 2024
2. Notice of Motion to Amend Pleadings
3. Motion to Amend Pleadings
4. Second Amended Complaint
5. Redline – Amend Complaint to Second Amended Complaint
6. Memorandum in Support of Motion to Amend Complaint
7. Affidavit of Paul A. Sortland with Exhibits A-C

We will send a separate Dropbox Transfer containing Medical Records for Delores Gibson from Prairie Lakes Hospital and Clinic.

**Heather J. Nick, legal secretary**  
**SORTLAND LAW OFFICE, PLLC**  
451 South Seventh Street, Suite 2415  
Minneapolis MN 55415  
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---

TELEPHONE (612) 375-0400

**PAUL A. SORTLAND**  
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December 26, 2024

Mr. Zachary W. Peterson  
Mr. Jack Hieb  
Richardson Law Firm  
1 Court Street  
P.O. Box 1030  
Aberdeen, SD 57402-1030  
VIA E-MAIL ONLY: [zpeterson@rwwsh.com](mailto:zpeterson@rwwsh.com) [jhieb@rwwsh.com](mailto:jhieb@rwwsh.com)

Mr. Sander Morehead  
Mr. Jake Schneider  
Woods, Fuller, Shultz & Smith, P.C.  
PO Box 5027  
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VIA E-MAIL ONLY: [Sander.Morehead@woodsfuller.com](mailto:Sander.Morehead@woodsfuller.com) [jake.schneider@woodsfuller.com](mailto:jake.schneider@woodsfuller.com)

Mr. Ed Evans  
Evans, Haigh, & Arndt, LLP  
225 East 11<sup>th</sup> Street, Suite 201  
P.O. Box 2790  
Sioux Falls, SD, 57101-2790  
VIA E-MAIL ONLY: [eevans@ehalawyers.com](mailto:eevans@ehalawyers.com)

Re: Gibson v. Gibson, et al. - Court File No. 14CIV23-000350

Dear Counsel:

Since I have not heard from you regarding the Proposed Second Amended Complaint, I am

Counsel  
December 26, 2024  
Page 2

making a motion here to amend the pleadings. I would like to avoid the hearing. Please let me know if you will all consent to the Second Amended Complaint. Otherwise, we will need to have a hearing scheduled before the Court. I am enclosing the following:

- A. Notice of Motion to Amend Pleadings.
- B. Motion to Amend Pleadings.
- C. Copy of Proposed Amended Complaint.
- D. Redlined copy showing changes between previous Amended Complaint and this Second Amended Complaint.
- E. Memorandum in Support of Motion to Amend Pleadings.

If we do not reach an agreement, I will need to schedule a motion. As you may recall, I will be out of the country from about January 19 until February 11. We will need to arrange the hearing, and future depositions, around those dates.

I am sending a Dropbox Transfer download containing copies of medical records and medical expenses recently sent to us by Prairie Lakes Hospital and Clinic.

If you have any questions please let me know.

Yours very truly,

*Paul A. Sortland*

Paul A. Sortland

PAS/hja

Enclosures

cc: Mr. Grant Alvine (Via E-mail Only: [grant@alvinelaw.com](mailto:grant@alvinelaw.com))  
Ms. Abby Jonio (Via E-mail Only: [abigail@alvinelaw.com](mailto:abigail@alvinelaw.com))  
Clients (Via E-mail Only)

STATE OF SOUTH DAKOTA )  
:SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,

14CIV23-000350

Plaintiff,

vs.

GREG GIBSON, individually, JOAN  
GIBSON, individually, and GIBSON FAMILY  
LIMITED PARTNERSHIP, a South Dakota  
Limited Partnership; ROBERT M.  
RONAYNE, and RONAYNE LAW OFFICE,  
P.C.,

Defendants.

**AFFIDAVIT OF JODI LeBLANC**

STATE OF SOUTH DAKOTA )  
:SS  
COUNTY OF CODINGTON )

Jodi LeBlanc, being first duly sworn upon oath, states and alleges as follows:

1. I am a Health Information Specialist at Prairie Lakes Health Care System. As part of my job as the Health Information Specialist, I am responsible for releasing medical records and bills in response to subpoena requests.

2. On November 18, 2024, I received a subpoena request for medical records and bills of DeLores Gibson. The subpoena was issued in the name of Judge Carmen Means, in a case captioned *Michael A. Gibson v. Greg Gibson, individually; Joan Gibson, individually, and Gibson Family Limited Partnership, a South Dakota Limited Partnership; Robert M. Ronayne, And Ronayne Law Office, P.C.*, 14CIV23-000350, Circuit Court, Third Judicial Circuit. Codington County.

3. I scanned the subpoena to my email and forwarded it to Heather Brewster, Director of Quality Risk Management, Shelly Turbak, Chief Nursing Officer, and Kristi Osthuis, Director of Health Information Management for review and authorization to process and release the requested records. This is my standard practice for all subpoena requests. Once I received authorization, I prepared the medical records and bills that were requested in the subpoena.

4. On December 2, 2024, I contacted Paul Sortland to set up a Dropbox link, as directed by the subpoena. I spoke with Heather Nick, who I understand to be the legal secretary at Sortland Law Office. Ms. Nick emailed me a Dropbox link to place the medical records. However, I could not get the link to work properly.

5. I exchanged multiple correspondence with Ms. Nick to try to determine an alternative method of producing the requested medical records, and we agreed on providing them through a secure email. During our discussions, Ms. Nick informed me that all parties would have access to the records because they were working together.

6. During this time, I was aware that my coworker was processing a similar subpoena request, issued by Mr. Sortland, that requested Delores Gibson's medical records and bills from Prairie Lakes Brown Clinic Primary Care. I informed my coworker that the Dropbox link did not work. Therefore, I received permission from Kristi Osthuis, Director of Health Information Management, to securely email Ms. Gibson's medical records and bills to [heather@sortland.com](mailto:heather@sortland.com).

7. On December 3, 2024, I securely emailed [heather@sortland.com](mailto:heather@sortland.com) nine secure emails with protective health information on Delores Gibson.

8. Because I had no knowledge of the pending dispute, I relied on Mr. Sortland to provide requests approved by the judicial processes. The subpoena states that the document

should be treated as a court order. I was led to believe by the Sortland Law Office that the parties had no objection to the subpoenas and were working together to obtain Ms. Gibson's medical records and bills.

9. Mr. Sortland and Ms. Nick had multiple opportunities prior to December 3, 2024, to inform me of a dispute pending before the Court. However, at no point in time during any of my communications with the Sortland Law Office did Mr. Sortland or Ms. Nick inform me that anyone had objected to Prairie Lakes producing Ms. Gibson's medical records or bills.

10. Had Mr. Sortland or Ms. Nick informed me that Ms. Gibson or a party to the litigation on her behalf filed an objection to Mr. Sortland's subpoena request, I would not have produced any of Ms. Gibson's medical records, bills, or other protected health information.

Further affiant sayeth not.

Dated at Watertown, South Dakota, this 20 day of February, 2025.

John LeBlanc  
John LeBlanc

Subscribed and sworn to before me this 20 day of February, 2025.



Erica Orrey  
Notary Public, South Dakota  
My commission expires: 8-31-27

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

IN CIRCUIT COURT

THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,

14CTV23-000350

Plaintiff

Judge Carmen Means

v.

GREGORY GIBSON, individually; JOAN GIBSON, individually, and GIBSON FAMILY LIMITED PARTNERSHIP, a South Dakota Limited Partnership; ROBERT M. RONAYNE, and RONAYNE LAW OFFICE, P.C.,

AFFIDAVIT OF PAUL A. SORTLAND,  
MARCH 4, 2025, REGARDING MOTION  
TO DISMISS, ET AL.

Defendants.

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

Paul A. Sortland, being first duly sworn, deposes and states as follows:

1. I am one of the attorneys for the Plaintiff, Michael A. Gibson, and the Michael & Tara Gibson Living Trust.
2. I have been practicing law since graduation from the University of Minnesota Law School in 1978. I have practiced law continuously since then, in a variety of litigation. However, for the past twenty years, my focus has been on professional negligence, analyzing and preparing claims against other legal professionals for negligence and wrongful actions.
3. I am certified as a Civil Trial Specialist by the Litigation Section of the Minnesota State Bar Association, and was first certified on June 1, 1990.

4. I have previously been an Adjunct Professor of Business Law at Moorhead State University. I have been named a "Super Lawyer" by *Minnesota Law & Politics*, and have been a Super Lawyer since 2006. I am rated "AV" by Martindale Hubble. My practice of law includes serving as resident manager of the Fargo office of Qualley Larson & Jones, headquartered in Sioux City, with offices also in Sioux Falls and elsewhere. I was later a partner and chair of business litigation of Messerli & Kramer, one of the top law firms in Minneapolis. I am a member of the Minnesota Association for Justice, the Minnesota State Bar Association, and the State Bar Association of North Dakota.
5. I am admitted to practice in the state and federal courts of both Minnesota and North Dakota. I am also admitted to the Eighth Circuit Court of Appeals and to the United States Supreme Court.
6. I appear in this action on a pro hac vice basis with Mr. Grant Alvine serving as local counsel.
7. While I have been admitted to pursue this case on behalf of our clients on a pro hac vice basis, in that capacity, I do not have filing privileges through the Odyssey E-file System as a South Dakota resident attorney would. Everything we file has to be submitted by Mr. Alvine's office. While this is a little slow sometimes, I do appreciate the ability of Mr. Alvine to review my work before it is submitted to the Court and counsel.
8. When I prepared the first set of subpoenas, I sent those to Mr. Alvine's office with a letter of May 7, 2024, attached as Exhibit A, which indicated we would be first filing before serving the subpoenas. Mr. Alvine's office mistakenly informed me that we do not need to file or serve the subpoena before serving the witness. Consequently, we sent

those subpoenas directly to the sheriffs' offices or to private process servers. Email, May 7, 2024, attached as Exhibit B.

9. After the complaints of Mr. Schoenbeck, we discovered that South Dakota law was, indeed, the same as Minnesota, and we were required to serve the subpoenas after first filing them with the Court.
10. A copy of Mr. Alvine's email of May 30, 2024, is attached as Exhibit C, indicating his acknowledgment of the mistake. Since then, we have always filed these subpoenas so that they are available to opposing counsel, before causing them to be served.
11. There really were no problems with the depositions, subpoenas, and document production until we got to the subpoenas served upon Prairie Lakes Health facilities, and related entities. Before this time, while there may have been minor errors, we proceeded along and seemed to work out minor disputes with opposing counsel.
12. Now, it appears that GFLP and Evans are complaining about the subpoenas served on Prairie Lakes and related entities. These were served through the South Dakota Odyssey Court System and filed in this case, making them available to the other attorneys and the public.
13. These were served on November 15, 2024. Copies of these subpoenas served upon Prairies Lakes Hospital, Prairie Lakes Brown Clinic-Main, Prairie Lakes Brown Clinic-Northridge, are attached as Exhibits D, E, and F, respectively.
14. We did not receive anything from the other deponents served on November 15, including Lee Hendricks, and Dr. Sarah Reiffenberger, and Sanford Watertown Clinic. These are attached as Exhibits G, H, and I.

15. Exhibits J, K, and L, are true and correct copies of the Affidavits of Service, signed by Brooke Bailly, the process server we hired, showing that she served the Prairie Lakes entities on November 18, 2024.
16. Attached as Exhibit M is a true and correct copy of pertinent portion of the Case Summary, printed on February 28, 2025.
17. When we received the call from Prairie Lakes Health System, on December 2, a woman identified as Jodi, talked to my secretary, Heather, inquiring about the Dropbox services. It is my understanding that Heather provided Jodi with a Dropbox link by email. Attached as Exhibit N is email correspondence between Heather and Jodi LeBlanc, December 2, 2024.
18. However, on December 3, 2024, we received the files from the hospital by email through a Zix secure message system. Copies of two of the several emails we received from Jodi LeBlanc, and later from Jeanne Schick, are attached as Exhibits O and P. We received several of these secure emails during the day on December 3, 2024.
19. I never spoke with Jodi LeBlanc. I do not believe my secretary, Heather, did anything other than comply with Ms. LeBlanc's requests. The objections that we had received from Mr. Evans earlier were disregarded as no date for a hearing on the objection had ever been scheduled. In addition, of course, Mr. Evans represented Gibson Family Limited Partnership, had absolutely no legal effect, because Gibson Family Limited Partnership has no standing to object to the medical records of Delores Gibson in this case.
20. Since then, we have provided copies to opposing counsel pursuant to the rules.

21. Attached as Exhibit Q is a true and correct copy of select portions of the Deposition of Brian Rawerts, November 11, 2024.
22. Attached as Exhibit R is a true and correct copy of select portions of the Deposition of Jon Kaufman, November 11, 2024.
23. Attached as Exhibit S is a true and correct copy of Deposition Exhibit 88, an email from Michael Gibson to Schwan Financial, July 25, 2022.
24. Attached as Exhibit T is a true and correct copy of select portions of the Deposition of Joan Gibson, November 22, 2024.

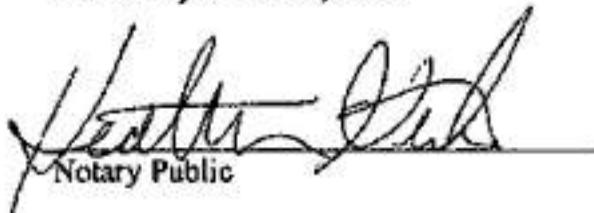
Dated at Minneapolis, Minnesota, this 4<sup>th</sup> day of March, 2025.



---

Paul A. Sortland

Subscribed and sworn to before me  
this 4<sup>th</sup> day of March, 2025.



---

Heather Janeen Nick  
Notary Public



## Heather Nick

---

**From:** Jodi LeBlanc <Jodi.LeBlanc@prairielakes.com>  
**Sent:** Monday, December 2, 2024 4:44 PM  
**To:** Heather Nick  
**Subject:** RE: Gibson - Subpoena Production - Prairie Lakes

Thank you! Received.

I will work on dropping the information tomorrow and I will email you once complete. ☺



EXHIBIT

N

**From:** Heather Nick <heather@sortland.com>  
**Sent:** Monday, December 2, 2024 4:42 PM  
**To:** Jodi LeBlanc <Jodi.LeBlanc@prairielakes.com>  
**Cc:** Heather Nick <heather@sortland.com>; Paul Sortland <sortland@sortland.com>  
**Subject:** [EXTERNAL] Gibson - Subpoena Production - Prairie Lakes

Think Security - This message originated outside your organization. Exercise caution before clicking any links or attachments.

Dear Ms. LeBlanc:

Attached please find a Dropbox link which you can click on and copy and paste the materials into the Dropbox file. Let me know if you have any issues placing materials into the Dropbox link.

Please also let me know when the materials are placed into the Dropbox file. Thank you.

<https://www.dropbox.com/scl/fb/6itbooiydg7h1mry09jr/AGc155Los1pEFcQuYOgNGeM?rlkey=zvdxg9mqdtim9qtc0sx181px&dl=0>

**Heather J. Nick, legal secretary**  
**SORTLAND LAW OFFICE, PLLC**  
431 South Seventh Street, Suite 2415  
Minneapolis MN 55415  
(612) 376-0400  
heather@sortlandjnj.com

Heather Nick

---

**From:** Jodi LeBlanc <prairielakes.notification@zixmessagecenter.com>  
**Sent:** Tuesday, December 3, 2024 11:16 AM  
**To:** Heather Nick  
**Subject:** Electronic Medical Record zix

---

---

**New Zix secure email message from Prairie Lakes Healthcare System**

---

**Open Message**

To view the secure message, click Open Message.

The secure message expires on Dec 24, 2024 @ 05:16 PM (GMT).

Do not reply to this notification message; this message was auto-generated by the sender's security system. To reply to the sender, click Open Message.

If clicking Open Message does not work, copy and paste the link below into your Internet browser address bar.

<https://web1.zixmail.net/s/e?b=prairielakes&>

EXHIBIT

O

Heather Nick

---

**From:** Jeanne Schick <prairielakes.notification@zixmessagecenter.com>  
**Sent:** Tuesday, December 3, 2024 2:58 PM  
**To:** Heather Nick  
**Subject:** zix re: records

---

## New Zix secure email message from Prairie Lakes Healthcare System

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**Open Message**

To view the secure message, click Open Message.

The secure message expires on Dec 24, 2024 @ 08:57 PM (CST).

EXHIBIT

**P**

Do not reply to this notification message; this message was auto-generated by the sender's security system. To reply to the sender, click Open Message.

If clicking Open Message does not work, copy and paste the link below into your Internet browser address bar.

<https://web1.zixmail.net/s/e?b=prairielakes&>

STATE OF SOUTH DAKOTA )  
: SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,

CIV. 23-000350

Plaintiff,

vs.

GREG GIBSON, INDIVIDUALLY, JOAN  
GIBSON, INDIVIDUALLY, AND GIBSON  
FAMILY LIMITED PARTNERSHIP, A  
SOUTH DAKOTA LIMITED PARTNERSHIP;  
ROBERT M. RONAYNE, AND RONAYNE  
LAW OFFICE, P.C.,

**NOTICE OF HEARING**

Defendants.

PLEASE TAKE NOTICE that a hearing on Defendant Gibson Family Limited Partnership's Motion to Dismiss for Court Rule and Other Violations or, Alternatively, for Other Appropriate Sanctions (filed January 17, 2025), Defendant Gibson Family Limited Partnership's Motion to Quash Subpoenas Duces Tecum for Medical Records and Bills and for Protective Order (filed November 18, 2024), and Defendant Gibson Family Limited Partnership's Motion to Quash Subpoenas Duces Tecum and for Protective Order (filed July 1, 2024) will be held at the Codington County Courthouse, 14 1<sup>st</sup> Ave SE, Watertown, SD 57201, before the Honorable Carmen A. Means, Circuit Court Judge of the Third Judicial Circuit, South Dakota, on Tuesday, the 11<sup>th</sup> day of March, 2025, at 1:30 p.m. or as soon thereafter as counsel may be heard.

Dated at Sioux Falls, South Dakota, this 24<sup>th</sup> day of January, 2025.

EVANS, HAIGH & ARNDT, L.L.P.

/s/ *Edwin E. Evans*

Edwin E. Evans  
Ryan W.W. Redd  
225 E. 11<sup>th</sup> Street, Suite 201  
PO Box 2790  
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**CERTIFICATE OF SERVICE**

The undersigned, one of the attorneys for Defendant Gibson Family Limited Partnership, hereby certifies that a true and correct copy of the foregoing "Notice of Hearing" was served via Odyssey File & Serve upon:

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on this 24<sup>th</sup> day of January, 2025.

/s/ Edwin E. Evans  
Edwin E. Evans

1 STATE OF SOUTH DAKOTA |

IN CIRCUIT COURT

2 COUNTY OF CODINGTON |

THIRD JUDICIAL CIRCUIT

4 \_\_\_\_\_ | )  
5 Michael Gibson, | )  
6 Plaintiff, | ) Motion Hearing  
7 vs. | ) Civ. 23-350  
8 Greg Gibson, individually, | )  
9 Joan Gibson, individually, | )  
10 and Gibson Family Limited | )  
11 Partnership, a South Dakota | )  
12 Limited Partnership; Robert | )  
13 M. Ronayne, and Ronayne Law | )  
14 Office, P.C., | )  
15 \_\_\_\_\_ | )  
16 Defendants.

17  
18 BEFORE: THE HONORABLE CARMEN MEANS  
19 Circuit Court Judge  
20 Watertown, South Dakota  
21 March 26, 2024

22 APPEARANCES:

23 For Michael Gibson: Mr. Paul Sortland  
24 Sortland Law Office  
25 Minneapolis, MN

For Greg and Joan Mr. Sander Morehead  
Gibson: Woods, Fuller, Shultz & Smith  
Sioux Falls, SD

For Robert Ronayne: Mr. Zachary Peterson  
Richardson, Wily, Wise, Sauck & Hieb  
Aberdeen, SD

1 upon Greg and the allegation that you have to serve the general  
2 partner is not supported by this. Furthermore, if you go to the  
3 information found at the Secretary of State it does state that  
4 Delores Gibson is an agent for service of process but it gives  
5 an answer out in the country either just down the road from  
6 Michael's home or in the field across from Michael's home.  
7 There's no way we could serve the agent at that place because it  
8 basically doesn't exist and if you google it it's a field I  
9 think across from Greg's house. It may be her house down the  
10 road, I'm not really aware of the personal situations, but it  
11 just gives us an address that can't be served and so we're  
12 limited to doing what we can and I think service of process upon  
13 Greg Gibson is appropriate under this statute.

14 THE COURT: All right. Well I'm going to say at the  
15 outset that it is a little challenging as a judge to consider a  
16 12(b)(5) motion where I am only considering the pleadings and  
17 then considering a motion to -- whether or not to appoint a  
18 receiver which obviously gives me access to much broader  
19 information and gives me some better idea of the lay of the land  
20 and so I'm going to start with the motions to dismiss. A motion  
21 to dismiss on 12(b)(5) grounds is meant to help the Court cull  
22 lawsuits that don't state any cause of action and I must say it  
23 is tempting to issue -- to use that discretion to grant a motion  
24 for a case that I cannot help but observe is the third lawsuit  
25 involving these parties, but again I don't get to really

1 consider that. So even though I would like to say that this  
2 lawsuit seems to me to be without a lot of foundation, I think  
3 for the purposes of a 12(b)(5) motion where I consider all of  
4 the facts pled to be true, and this is a close call from my  
5 point of view, I don't think that the plaintiff has done a very  
6 good job of establishing a fiduciary duty, but there are at  
7 least sufficient facts for me to conclude that this Amended  
8 Complaint will survive a 12(b)(5) motion to dismiss so I'm going  
9 to deny that motion on behalf of both defendant Greg Gibson and  
10 defendant Ronayne. I obviously have a lot more ability to  
11 understand the background of this case when I consider a motion  
12 for the appointment of a receiver. I do conclude that the  
13 notice to the general partner is insufficient, but even if it  
14 weren't, even if somehow this limited partnership could be  
15 deemed to have been properly served on the issue of whether or  
16 not to appoint a receiver, I would not consider appointing a  
17 receiver in this matter and when I think about that I do think  
18 about some of those pleadings where I hear that this is the  
19 third time that Mr. Gibson has brought suit against family  
20 members, the other two times that he was found to have committed  
21 perjury, that he engaged in acts that led him to have unclean  
22 hands, and that was a determination by the Court in the prior  
23 lawsuit, that is a final determination. And so I think that  
24 there is no reason for the Court to engage in what is called an  
25 extraordinary measure to appoint a receiver. The Court is

1 satisfied from the submissions that there has been no effort to  
2 remove Delores as the general partner, but even if there were  
3 that she has an attorney in her daughter and that Greg has  
4 withdrawn his power of attorney to act with regard to the GFLP  
5 matters, but I am satisfied that there is no need to appoint a  
6 receiver, there is no basis to appoint a receiver, and that the  
7 plaintiff has failed to satisfy his burden of proof that a  
8 receiver is necessary. With regard to the motion to extend  
9 deadlines, that is obviously something I don't need to hear  
10 argument on, scheduling is something within the discretion of  
11 the trial court and I'm going to grant the defendant's motions  
12 to extend deadlines. I think the grounds stated were  
13 appropriate, there is no need to have some sort of quid pro quo  
14 we'll agree to that if this happens or that happens, that motion  
15 to extend is reasonable and will be granted. And so based upon  
16 the things that I have said, Mr. Peterson do you understand the  
17 Court's ruling or are you asking for any additional findings for  
18 purposes of today?

19 MR. PETERSON: No, your Honor, just to confirm though  
20 when you say the motion to extend is granted, the relief we  
21 sought was 30 days from the Court's ruling so would I assume 30  
22 days from today would be the deadline for our discovery  
23 responses?

24 THE COURT: Correct.

25 MR. PETERSON: Thank you.

1 IN CIRCUIT COURT

2 :SS

CERTIFICATE

3 COUNTY OF CODINGTON

4 )

5 This is to certify that I, Dawn Russell, Court Reporter in  
6 the above-named County and State, took the foregoing  
7 proceedings, and the foregoing page 1-20, inclusive, are a true  
8 and correct transcript of my stenotype notes.

9 Dated at Watertown, South Dakota, this 3rd day of July,  
10 2024.

11  
12 /s/ Dawn Russell

13 Dawn Russell, Court Reporter

14

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25

STATE OF SOUTH DAKOTA )  
 ) :SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,

Plaintiff

v.

GREGORY GIBSON, individually; JOAN GIBSON, individually, and GIBSON FAMILY LIMITED PARTNERSHIP, a South Dakota Limited Partnership; ROBERT M. RONAYNE, and RONAYNE LAW OFFICE, P.C.,

Defendants.

I4CIV23-000350

Judge Carmen Means

NOTICE OF WITHDRAWAL  
OF COUNSEL

PLEASE TAKE NOTICE that Attorney Paul A. Sortland, Sortland Law Office, PLLC, of Minneapolis, Minnesota, hereby withdraws as counsel for Michael A. Gibson in this case. Future correspondence can be sent to Jonathan A. Heber, Cutler Law Firm, LLP, 140 N. Phillips Avenue, 4th Floor, PO Box 1400, Sioux Falls, SD 57101.

Dated this 2<sup>nd</sup> day of May, 2025.

s/ Paul A. Sortland

---

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STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:SS	
<u>COUNTY OF CODINGTON</u>	)	<u>THIRD JUDICIAL CIRCUIT</u>
MICHAEL A. GIBSON,		
	Plaintiff,	<b>14CIV23-000350</b>
v.		
GREG GIBSON, individually; JOAN GIBSON, individually; and GIBSON FAMILY LIMITED PARTNERSHIP, a South Dakota Limited Partnership; ROBERT M. RONAYNE, and RONAYNE LAW OFFICE, P.C.,		<b>MOTION TO WITHDRAW AS COUNSEL</b>
	Defendant.	

COMES NOW Grant Alvine, attorney for Plaintiff in the above-entitled matter hereby moves the Court for an Order permitting withdrawal as the Plaintiff retained new representation. Future correspondence can be sent to Shawn Nichols at Cadwell Sanford Deibert & Garry, LLP, 200 E. 10<sup>th</sup> Street, Ste. 200, Sioux Falls, South Dakota, 57104 and Jonathan A. Heber and Abigale Farley of Cutler Law Firm, LLP, 140 N. Phillips Avenue, 4<sup>th</sup> Floor, Sioux Falls, South Dakota, 57101.

Dated this 18<sup>th</sup> day of July 2025.



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**15-6-41(b). Involuntary dismissal—Effect thereof.**

For failure of the plaintiff to prosecute or to comply with this chapter or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff's evidence, the defendant, without waiving the defendant's right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in § 15-6-52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this section and any dismissal not provided for in § 15-6-41, other than a dismissal for lack of jurisdiction, or for failure to join a party under § 15-6-19, operates as an adjudication upon the merits.

**15-6-45(b). Subpoena for production of documentary evidence.**

A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein, regardless of whether the attorney also notices the person's deposition or commands the presence of the person to which it is directed to give testimony at a hearing or trial. Before a subpoena commanding the production of documentary evidence is served on the person to whom it is directed, a notice and copy of the subpoena must be served on each party to the matter pending. The court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

- (1) Quash or modify the subpoena if it is unreasonable and oppressive; or
- (2) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

**19-19-503. Physician and psychotherapist-patient privilege.**

(a) Definitions. As used in this section:

- (1) A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist;
- (2) A "physician" is a person authorized in any state or nation to engage in the diagnosis or treatment of any human ill, or reasonably believed by the patient so to be;
- (3) A "psychotherapist" is:
  - (A) A person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction; or
  - (B) A person licensed or certified as a psychologist under the laws of any state or nation, while similarly engaged;
- (4) A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of patient in the consultation, examination, or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(b) General rule of privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental, or emotional condition, including alcohol or drug addiction, among himself, physician, or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(c) Who may claim privilege. The privilege may be claimed by the patient, his guardian or conservator, or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

(d) Exceptions.

- (1) Proceedings for hospitalization. There is no privilege under this section for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.
- (2) Examination by order of court. If the court orders an examination of the physical, mental, or emotional condition of a patient, whether a party or a witness, communications made in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

(3) The privilege under subdivision (b) as to a communication relevant to an issue of the physical, mental, or emotional condition of the patient is waived at trial or for the purpose of discovery under chapter 15-6 in any proceeding in which the condition is an element of the patient's claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of a claim or defense.

**19-2-3. Physician-patient privilege waived when health of person in issue—Waiver to be closely tailored—In camera review if party objects to discovery.**

In any action or proceeding or quasi-judicial administrative proceeding, if the physical or mental health of any person is in issue, any privilege under subdivision 19-19-503(b) is waived at trial or for the purpose of discovery under chapter 15-6 if such action or proceeding is civil in nature. However, the waiver of the privilege shall be narrow in scope, closely tailored to the time period or subject matter of the claim. If any party or the holder of the privileged records objects to the discovery of the privileged communication on the grounds that disclosure of the communication would subject the party to annoyance, embarrassment, oppression, or undue burden or expense and that the disclosure of the privileged communication is not likely to lead to the discovery of relevant evidence, the court shall conduct an in camera review of the privileged communication to determine whether the communication is discoverable.

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

---

No. 31073

---

MICHAEL A. GIBSON,

Plaintiff/Appellant,

vs.

GREG GIBSON, Individually, JOAN GIBSON, Individually, and GIBSON FAMILY LIMITED PARTNERSHIP, a SOUTH DAKOTA LIMITED PARTNERSHIP; ROBERT M. RONAYNE, AND RONAYNE LAW OFFICE P.C.,

Defendants/Appellees.

---

Appeal from the Circuit Court, Third Judicial Circuit  
Codington County, South Dakota

The Honorable Carmen A. Means, Presiding Judge

---

**BRIEF OF APPELLEE GIBSON FAMILY LIMITED PARTNERSHIP**

---

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Notice of Appeal filed April 25, 2025

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## **PRELIMINARY STATEMENT**

Citations to the Certified Record are "R." followed by the applicable page number(s) in the Clerk's Index. References to Appellant's Brief are "Appellant's Brief," to Appellant's Appendix are "App.," and to Gibson Family Limited Partnership's Appendix are "GFLP App." followed by the applicable page number(s). Defendant Gibson Family Limited Partnership will be referred to as "GFLP."

## **JURISDICTIONAL STATEMENT**

Plaintiff appeals from an Order and Judgment, entered and noticed on March 26, 2025, granting GFLP's Motion to Dismiss, in the Third Judicial Circuit, Codington County. R.2427-2431. Plaintiff also appeals from the Order Denying Motion for Reconsideration entered April 17, 2025, and noticed on April 23, 2025. R.2566-2567; App.4-5. Plaintiff filed a Notice of Appeal of the Order on April 25, 2025. R.2588. On May 15, 2025, an amended Order and Judgment was filed to insert costs. R.2647-2649; App.1-3. An Amended Notice of Appeal was filed on June 13, 2025, appealing the amended Order and Judgment. R.2701-2702.

Plaintiff's Notice of Appeal was timely; however, Plaintiff has not satisfied the mandatory jurisdictional requirement to perfect his appeal, as he has not filed a bond for costs as required by SDCL 15-26A-23. SDCL 15-26A-23 states, in relevant part:

a bond for costs on appeal or equivalent security *shall be filed* by the appellant with the clerk of the circuit court within the time provided by § 15-26A-6; but security shall not be required of an appellant who is not subject to costs. The bond or equivalent security shall be in the sum or value of five hundred dollars.

(emphasis added). “SDCL 15-26A-23 *requires* appellants to file a bond to cover cost of appeal . . . .” *First Nat'l Bank of Black Hills v. Treadway*, 339 N.W.2d 119, 121 (S.D. 1983) (emphasis added).

Plaintiff had 30 days from March 26, 2025, when the Notice of Entry of Order and Judgment dismissing the case was filed, to file a bond for cost. Plaintiff did not do so. Plaintiff’s failure to file a cost bond deprives this Court of jurisdiction, and this appeal should be dismissed.

Absent Plaintiff’s failure to pay the required bond, this Court would have jurisdiction to consider Plaintiff’s appeal under SDCL 15-26A-3(1).

**REQUEST FOR ORAL ARGUMENT**

GFLP respectfully requests oral argument.

## STATEMENT OF THE ISSUES

### **1. Whether the circuit court abused its discretion by dismissing Plaintiff's claim due to Plaintiff's egregious violations of the Rules of Civil Procedure.**

The circuit court's dismissal was proper. Plaintiff served subpoenas duces tecum upon health care providers, seeking medical records and bills of a non-party, Delores Gibson. Motions to quash the subpoenas were timely filed. Plaintiffs ignored the objections asserted in the Motions to Quash, failed to inform medical providers of the objections and pending motions, and falsely represented to the medical providers that the parties were working together in order to obtain Delores' privileged medical records. In response to GFLP's Motion to Dismiss for discovery violations, the circuit court found that Plaintiff intentionally and in bad faith violated the Rules of Civil Procedure and abused discovery in order to obtain protected, privileged, and private medical records of a non-party. Given the severity of the conduct and the lack of contrition, the circuit court exercised its discretion by dismissing Plaintiff's case pursuant to SDCL 15-6-41(b).

- *Storm v. Durr*, 2003 S.D. 6, 657 N.W.2d 34.
- *Potomac Elec. Power Co. v. Electric Motor Supply, Inc.*, 190 F.R.D. 372 (D. Md. 1999)
- SDCL 15-6-41(b)
- SDCL 15-6-45(b)

## **STATEMENT OF THE CASE**

This case is another chapter in a trilogy of lawsuits commenced by Michael Gibson against his brother (Greg Gibson), mother (Delores Gibson), and GFLP, claiming in each lawsuit that Greg received preferential treatment from Delores when she, as general partner, sold and leased GFLP property to Greg. In this lawsuit, Michael claimed that his mother was unduly influenced into selling land to Greg—just as she had done previously and was the subject of Michael’s previous lawsuits against his mother, brother, and GFLP.

During discovery, GFLP objected to Michael’s attempt to obtain Delores’s medical records. Despite GFLP’s objections, Michael proceeded to use the power of the court to subpoena Delores’ privileged medical records from her healthcare providers. One day after learning of the subpoenas, GFLP timely objected and moved to quash the subpoenas and moved for a protective order, prohibiting Michael from seeking discovery of Delores’s medical information.

Michael’s attorney, Paul Sortland, “disregarded” GFLP’s objections and proceeded to obtain Delores’ medical records from Prairie Lakes Hospital. Attorney Sortland did not inform Prairie Lakes that GFLP had objected to the subpoena or that a motion to quash the production of Delores’ medical records was pending. Instead, his office represented to Prairie Lakes that the parties were working together to obtain these medical records. Based on the false representations from Attorney Sortland’s office, Delores’ medical records were produced to Sortland. Attorney Sortland incorporated the privileged information into a proposed Second Amended Complaint, which he subsequently filed in the public record.

Upon learning of these events, GFLP filed a Motion to Dismiss for Court Rule and Other Violations or, alternatively, for other appropriate sanctions. On March 11, 2025, a hearing was held before the Honorable Carmen Means. At the hearing, the circuit court found that Attorney Sortland blatantly and in bad faith disregarded the rules and statutes to protect privileged and private medical records. The court held that Attorney Sortland's conduct was dishonest and egregious, and the court found it "extremely disturbing" that Attorney Sortland showed no regret and took no accountability for his actions. The court exercised its discretion to dismiss Michael's case as a sanction for counsel's egregious conduct. Plaintiff moved the court to reconsider its dismissal and argued that less severe sanctions could be implemented. Plaintiff's motion for reconsideration was denied.

#### **STATEMENT OF FACTS**

#### **GFLP HISTORICAL BACKGROUND**

In 2002, Delores and her sons, Michael and Greg, formed the GFLP. *Gibson v. Gibson Family Ltd. P'ship*, 2016 S.D. 26, ¶ 2, 877 N.W.2d 597, 599. As limited partners in the GFLP, Michael and Greg each have a 45.802% interest while Delores retains the remaining 8.266% interest. R.142-166. Delores also serves as the sole general partner of the GFLP and holds a 0.13% interest in that capacity. Under the partnership agreement, Delores has sole authority to manage the business affairs of the GFLP and to decide with whom the partnership conducts business. *Gibson*, 2016 S.D. 26, ¶ 2. Michael and Greg have no right to manage any of the business affairs of the GFLP. *Id.* At the time of its formation, all parties shared a clear understanding that the GFLP was being created for estate planning purposes. *Id.*

After the GFLP was formed in 2002, Delores deeded 2,060 acres of land to the limited partnership that she previously owned free and clear. *Id.* ¶ 3. Neither Michael nor Greg paid anything for their interest in the GFLP. *Id.*

### **MICHAEL'S MISCONDUCT**

Michael's troubled relationship with GFLP is succinctly outlined in the Findings of Fact that Judge Robert Timm entered in connection with Michael's second lawsuit against GFLP and Delores. R.246-256. Judge Timm's findings, include:

- Michael's unauthorized investment of over \$1.4 million of Gibson Livestock and GFLP funds.
- Michael's unauthorized \$688,000 mortgage on GFLP property.
- Michael's forgery of checks and bank statements.
- Michael's admission under oath to forging checks and lying about it during his deposition.
- Michael's misappropriation of GFLP land and refusal to vacate and surrender possession to the limited partnership, which he admitted breached the partnership agreement and violated the fiduciary duties owed to the partnership.
- Based on these actions, Delores decided not to conduct anymore business with Michael.

R.248-250.

In 2007, GFLP loaned Greg \$350,000, through two consolidated notes. That same year, Michael sued Greg, Delores, and GFLP, asserting eight different counts including intentional interference with contract, enforcement of oral lease agreements, slander, negligence, breach of fiduciary duty, fraud and deceit, an accounting and valuation of the limited partnership, and judicial dissolution of the GFLP. *Michael A. Gibson et al. v. Gregory J. Gibson et al.*, Civ. 07-31, Third Judicial Circuit, Deuel

County, South Dakota (“the First Litigation”). *Id.* Michael sought punitive damages against the defendants, including his mother.

In September of 2008, GFLP leased 2,060 acres of agricultural land to Greg, pursuant to a written lease agreement (the “Farm Lease”). R.247. The Farm Lease was for a five-year term. R.247-48.

The First Litigation went to trial in December 2009. The primary basis for Michael’s lawsuit was Delores’ decisions to loan funds and lease partnership land to Greg. R.232-242. The jury in the First Litigation returned a verdict in Greg, Delores, and GFLP’s favor on all of Michael’s claims, thereby ratifying the loans made to Greg and the Farm Lease.

In October 2010, Delores consulted with the GFLP’s attorney Robert Ronayne and her financial advisor regarding planning for the future. After consulting with these advisors, Delores—seeking some peace, quiet and stability regarding the situation—entered into a longer-term lease with Greg (“the Amended Farm Lease”). *Gibson*, 2016 S.D. 26, ¶ 4. Under the Amended Farm Lease, the GFLP agreed to lease 1,230 acres to Greg for a 20-year term. *Id.* GFLP also agreed to sell 830 acres to Greg for \$1,100,000. *Id.*; R.248; 291-292. Prior to the sale, the property appraised for \$1,100,000. *Id.*

On June 30, 2011, Michael filed a second lawsuit against Greg, Delores, and GFLP, asserting six counts: declaratory judgment, cancellation of instrument, breach of fiduciary duty, dissociation of general partner, appointment of a receiver, and dissolution of GFLP. *Id.* ¶ 5; *Michael A. Gibson et al. v. Gibson Family Limited Partnership and Delores Gibson*, Civ. 11-66, Third Judicial Circuit, Deuel County (the “Second Litigation”). Once again, Michael sought punitive damages from the defendants,

including his mother. *Id.* As in the First Litigation, Michael alleged Delores breached her fiduciary duty by selling and leasing land to Greg. *Id.* Once again, the jury returned a verdict in favor of Greg, Delores, and the GFLP on all of Michael's claims against them, thereby ratifying Delores' actions. *Id.* ¶ 6.

Thereafter, the issue of equitable dissolution was submitted to the court. Judge Timm issued Findings of Fact and Conclusions of law, denying Michael's dissolution claim, holding that he was not entitled to the equitable remedy of dissociation because (1) Michael had failed to come into the litigation with clean hands and (2) Michael had not established the right to dissociation under SDCL 48-7A-601. R.246-257.

Michael appealed the denial of his dissociation request and evidentiary rulings in the Second Litigation. This Court affirmed. *Gibson*, 2016 S.D. 26.

#### **THE PRESENT/THIRD LITIGATION**

GFLP's dissolution date is December 31, 2025, unless all of the partners agree otherwise. R.2720. In April 2022, as the dissolution date approached, Delores again consulted with the GFLP's attorney Robert Ronayne regarding Greg's lease of GFLP property and possibility of selling additional GFLP land to Greg. At that time, Greg was still leasing GFLP property pursuant to the Amended Farm Lease, which expired in 2030. After consulting with Ronayne, Delores—seeking to avoid another round of litigation with Michael—decided to enter into a new lease with Greg. The new lease shortened the term of the lease to December 31, 2026, to coincide more-closely with the dissolution date of the GFLP and contained an option to purchase the remaining GFLP property at its appraised value—just as she had previously done in 2010, which was the subject of the Second Litigation. R.267-274.

On April 19, 2022, Delores executed the “LEASE AND AGREEMENT” with option to purchase under certain conditions (the “Lease”). The Lease provided Greg with the “exclusive option to purchase” any of the GFLP land he was leasing. R.267-274. Later, Greg expressed his interest in exercising his option to purchase the land identified in the Lease. R.294-295. GFLP retained a South Dakota certified land appraiser, who appraised five tracts of GFLP property for a combined value of \$4,050,000. R.2010-2315. Greg then advised that he wanted to exercise his option to purchase Tracts 1, 2, 3, and 4, which appraised for \$2,950,000.<sup>1</sup> In September 2022, consistent with the terms of the Lease and Greg’s option to purchase, the four tracts were sold to Greg for \$2,950,000. R.2318-2319.

Upon learning of the Lease on May 2, 2022, Michael did nothing. *See* R.300 (referencing the Lease). On September 8, 2022, Ronayne told Michael’s attorney, Shawn Nichols, of the proposed sale to Greg. R.523, 1354. Michael waited until the sale was completed and then offered a higher sum for the tracts of land. R.24-26, 1354.

On October 11, 2023, Michael filed a third lawsuit against Greg, GFLP, and GFLP’s attorney, Rob Ronayne. R.1-17. He alleged undue influence, breach of fiduciary duty, aiding and abetting breaches of fiduciary duty, rescission, receivership, and tortious interference with existing and prospective business relationship (the “Third Litigation”). R.1-17. As in the First and Second Litigation, Michael alleged breach of fiduciary duty, contending that GFLP had sold land to Greg at less than market value. R.1-17. Unlike his previous two lawsuits, Michael did not sue Delores; instead, he claimed that Greg,

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<sup>1</sup> Greg did not exercise his option to purchase Tract 5, which appraised for \$1,100,000. R.2010.

assisted by Ronayne, unduly influenced Delores into selling him GFLP land. R.11. These contentions were raised despite the fact that the sale occurred pursuant to the Lease, the sale price was established by an appraisal, Delores previously sold land to Greg on similar terms, and Delores stated she would never do business with Michael due to his deceitful conduct.

Attorney James Malters filed a Motion for Pro Hac Vice for the admission of Attorney Paul Sortland. R.83-85. An Order for Pro Hac Vice was entered on December 15, 2023. R.87. Delores admitted service of the Summons and Amended Complaint on May 14, 2024. R.535.

#### **MICHAEL'S DISCOVERY ABUSES**

Plaintiff's counsel has issued **39 subpoenas duces tecum** in the name of the court. He issued 8 subpoenas duces tecum on May 7, 2024. R.1084-1119. Each subpoena demanded production of documents by June 1, 2024. R.1084-1119. No notice of the subpoenas was provided to the parties; the subpoenas were not contemporaneously filed upon their issuance. R.996. Those subpoenas were served on the non-party recipients on May 14 and May 15, 2024. R.1120-1127. The parties learned of the subpoenas at 4:31 pm on May 30, 2024, when the sheriff's returns were filed, more than two weeks after the subpoenas were served, and one day before the deadline for compliance. R.996.

On July 1, 2024, GFLP filed its first Motion to Quash Subpoenas Duces Tecum and for a Protective Order, objecting to Plaintiff's attempts to obtain Delores' personal financial and medical records. R.602. As outlined in GFLP's Motion, the subpoenas were defective under SDCL 15-6-45: they were not issued in the name of the court; they

were signed by an attorney not admitted to practice in South Dakota; they were not contemporaneously filed with the clerk; and they omitted the statutorily required text above the signature line. R.609-650, 666-668. Critically, Plaintiff caused the subpoenas to be served without advance notice to Defendants or Delores, in violation of SDCL 15-6-45(b) and HIPAA. R.996; 45 C.F.R. § 164.512(e)(1)(ii),(iii).

On August 8, 2024, without consulting with opposing counsel, Plaintiff noticed the deposition of “Delores Gibson, General Partner, Gibson Family Limited Partnership.” R.697. Delores is not a party to this lawsuit. On September 13, 2024, GFLP filed a Motion for Protective Order, asserting that subjecting Delores to a deposition would be harmful to her health, given her current mental and physical condition. R.699-712. GFLP’s Motion for a Protective Order was scheduled for hearing on October 21, 2024. R.735. On October 18, 2024, Plaintiff’s counsel requested the hearing on GFLP’s Motion for a Protective Order be postponed due to a personal family emergency. R.771. The hearing was never rescheduled.

Thereafter, at 4:04 pm, on Friday, November 15, 2024, counsel for Plaintiff filed six (6) subpoenas duces tecum. R.791-818. The subpoenas were directed to Sanford Health Watertown Clinic, Prairie Lakes Hospital, Prairie Lakes Brown Clinic-Northridge, Prairie Lakes Brown Clinic-Main, Lee Hendricks, PsyD, and Sarah Reiffenberger, M.D. R.791-818. Each subpoena demanded:

1. All medical records from January 1, 2018 to present date, for Delores kept by [the recipient of the subpoena]; and
2. All billings from January 1, 2018 to present date, for Delores kept by [the recipient of the subpoena].<sup>2</sup>

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<sup>2</sup> The subpoena duces tecum issued to Dr. Reiffenberger requested medical records and billing records “kept by Prairie Lakes Brown Clinic.” R.801.

R.791-818; App.17-40. The subpoenas required compliance by December 6, 2024, and instructed the recipient to contact Paul Sortland to set up a Dropbox link. R.791-818. Despite filing the subpoenas, Plaintiff did not file or serve a "Notice of Intent to Serve Subpoena Duces Tecum" with respect to any of the seven subpoenas. R.791-818; *see* SDCL 15-6-45(b).

Unbeknown to GFLP, the subpoenas were sent for service the next business day. R.1027-1032. The subpoenas were served on Monday, November 18, 2024 as follows:

1. Lee Hendricks, PsyD at 9:20 a.m.;
2. Dr. Rieffenberger and Prairie Lakes Brown Clinic Northridge at 9:40 a.m.;
3. Sanford Health Watertown Clinic at 12:00 p.m.;
4. Prairie Lakes Hospital at 12:05 p.m.; and
5. Prairie Lakes Brown Clinic-Main at 12:30 p.m.

R.1027-1032; App.45-50. Plaintiff did not serve Affidavits of Service reflecting the service of the above subpoenas until January 6, 2025, a month after the compliance date stated on the subpoenas. R.1027-1032 ("Service Only: 1/6/2025 4:34PM").

On November 18, 2024 at 3:36 p.m., GFLP filed a Motion to Quash Subpoenas Duces Tecum for Medical Records and Bills and for Protective Order. R.819-825. GFLP objected to the production of Delores' medical records on the basis that the medical records sought were for a non-party, were privileged, and the subpoenas were not HIPAA compliant. R.820-824. GFLP's Motion requested the court quash all of the subpoenas and a protective order be entered to prevent the discovery of Delores' privileged medical records. R.819-825.

On November 19, 2024, Attorney Sortland took the deposition of Delores' psychiatrist, Dr. Hendricks. R.1069. During the deposition, Attorney Sortland attempted

to coerce Dr. Hendricks into divulging Delores' protected health information, in violation of HIPAA and over GFLP and Delores' objections. R1070-1073. At that time, counsel for Delores and GFLP reiterated their objection that such privileged information would not be disclosed without a court order. R.1073.

The next day, November 20, 2024, Attorney Sortland sent an email to Attorney Evans in an attempt to resolve the discovery dispute over Delores' medical records. R.2563. He proposed a protective order. R.2563; App.83. Attorney Evans responded that he would visit with Delores about the issue but would not be able to do so until the following week. R.2563. It was also agreed that the deposition of Dr. Reiffenberger, Delores' primary care physician, would be postponed until the issue was resolved. R.2563-2564; App.83-84.

On December 2, 2024, Attorney Sortland requested that Attorney Evans, counsel for GFLP and Delores, execute a "Stipulation Regarding HIPAA," which sought Attorney Evans' agreement that Delores' medical records were relevant and could be disclosed by her health care providers. R.1076-1080; App.86-90. Attorney Evans declined to execute the Stipulation

That same day, Prairie Lakes' Health Information Specialist, Jodi LeBlanc, contacted Attorney Sortland to inquire about producing Delores' medical records, as commanded by the subpoena duces tecum. R.1833; App.95. LeBlanc and Attorney Sortland's office exchanged multiple communications regarding the manner and means of producing these records. R.1833; App.95. Attorney Sortland did not inform LeBlanc or Prairie Lakes that objections to the production of Delores' medical records were raised, nor did he inform them of Delores' refusal to stipulate to the disclosure of her

records. R.1834; App.96. Instead, Attorney Sortland's office represented that there were no objections and the parties were working together to obtain Delores' medical records. R.1834, 1974; App.96, 62. Because Attorney Sortland never informed LeBlanc of GFLP's objections, on December 3, 2024, Prairie Lakes produced Delores' medical records and other protected health information to Attorney Sortland. R.1834; 1975-1976; App.96, 62-64.

Attorney Sortland did not immediately inform GFLP or Delores of the production. Instead, it was only after reviewing Delores' medical records and incorporating the privileged information into a proposed Second Amended Complaint, that Plaintiff's counsel notified counsel for GFLP that Plaintiff obtained Delores' medical records from Prairie Lakes and offered to provide copies of the same to GFLP. R.1081-1083; 855-883; App.91-93. Plaintiff proceeded with filing the proposed Second Amended Complaint, without taking any measures to ensure the confidentiality of Delores' private health information. R.857-883.

On January 6, 2025, Plaintiff filed *another* subpoena duces tecum, seeking Delores' medical records from Dr. Hendricks. R.947-950; App.41-44. The subpoena requested the documents be produced by January 15, 2025. R.947; App.41. Plaintiff did not file a notice of intent to serve such subpoena. R.997. Yet, he proceeded to serve the subpoena on Dr. Hendricks on January 8, 2025. R.1147. Plaintiff did not inform GFLP that this subpoena was served. R.947. As with the prior subpoenas, Attorney Sortland sought to surreptitiously obtain Delores' medical records without ever informing Dr. Hendricks of Delores' and GFLP's objections, the same objections previously made

during Dr. Hendricks' deposition. On January 10, 2025, GFLP, again, moved to quash this subpoena and for a protective order. R.951-952.

#### **MOTION TO DISMISS HEARING**

On January 17, 2025, GFLP filed a Motion to Dismiss for violations of the Rules of Civil Procedure and other violations or, alternatively, for other appropriate sanctions. R.964-992. GFLP's motion was premised upon Plaintiff's repeated violations of the Rules of Civil Procedure and discovery abuses, including:

1. Repeatedly issuing subpoenas duces tecum demanding production of Delores' privileged medical information;
2. Failing to inform medical providers of Delores' objections;
3. Representing to medical providers that there were no objections and the parties were working together to obtain Delores' medical records;
4. Intentionally disregarding GFLP's objections in order to obtain confidential and privileged medical records;
5. Failing to inform GFLP immediately upon receiving the medical records; and
6. Reviewing Delores' medical records and filing an amended complaint, which discussed her confidential health information.

R. 967-992.

Plaintiff opposed the motion. R.1912-1927. However, Plaintiff failed to address the real issues: disregard and concealment of GFLP's and Delores' objections in order to obtain Delores' privileged medical records. R.1912-1927. Instead, Attorney Sortland submitted an affidavit outlining his professional experience and accomplishments. R.1936-1940; App.53-57. In his affidavit, Attorney Sortland admitted to failing to comply with Rule 45 when issuing subpoenas. R.1937; App.54. He also admitted his office exchanged multiple correspondence with Prairie Lakes and did not deny that Prairie Lakes was never informed of the objections to the production of Delores' medical records. R.1939; App.56. Sortland admitted “[t]he objections that we had received from

Mr. Evans earlier were disregarded as no date for a hearing on the objection had ever been scheduled." R.1939; App.56. Because Plaintiff refused to concede he did anything wrong, Plaintiff did not argue that any lesser sanctions should be imposed. R.1926.

At the hearing on GFLP's motion to dismiss, Attorney Sortland admitted to being aware of GFLP's timely objections to the subpoenas for Delores' medical records. R.2493; GFLP App.16. He admitted the information sought was not time sensitive but stated, "there really was no reason to hold up." R.2499; GFLP App.22. He claimed that "the objection could be ignored" because the Court did not rule on them before the time for compliance. R.2493; GFLP App.16. However, he showed no regret and maintained that he "didn't do anything wrong, and [he] believed we acted properly." R.2498; GFLP App.21.

During an exchange with the court, Judge Means expressed concern with Attorney Sortland's "cavalier disregard of the procedures that happened on a repeated basis" and asked Sortland what choice the court had but to dismiss the case to prevent Sortland from engaging in this kind of behavior. R.2499-2500; GFLP App.22-23. When asked whether Attorney Sortland would do anything different, if given the chance to do it over, he maintained that he would ignore the objections in order to obtain the privilege medical records of a third party. R.2501-2502; GFLP App.24-25. Attorney Sortland's response only caused greater concern for Judge Means: "When I listen to you I hear you say I didn't do a darn thing wrong and I don't need to employ any level of professional courtesy, I don't need to employ any level of personal decency, I have to advocate for my client and that's, the only thing I care about. That attitude concerns me." R.2502; GFLP App. 25.

Judge Means, based on the record and Attorney Sortland's comments at the hearing, ruled:

I look at this case as you blatantly and in bad faith disregarded the rules that are in place and the statutes that are in place to protect privileged and private medical records and that after you did so you did take a no harm no foul approach to it. Doesn't matter that they objected, I just assume everything was okay and I got these records anyway. I'm just astonished at your response and as I say when I listen to your response and I listen to the abuse of discovery that has occurred here I can't think of any way to be assured that you aren't going to engage in this kind of conduct again other than to dismiss this case because you have no remorse for what you did, the fact that you apologized to me here in open court means nothing to me. You would do this again in a heartbeat. Your manner here in the courtroom, the words that you used in your submissions all lead me to believe that if you are given the opportunity to abuse the rules again you will and you will say that it is just because you want to advocate for your client and you lost sight of everything else. . . . when I read about these abuses in the submissions and when I hear the responses in the courtroom, I think the appropriate sanction is to dismiss the case.

R.2504-2505; GFLP App.27-28.

Judge Means acknowledged that she loathed to deprive a party of their right to have their claims litigated because of the actions of counsel, and she balanced that fact against dismissing the action. However, "when I balance those things and when I hear what I hear in the courtroom I think the appropriate sanction is for me to dismiss the case." R.2505; GFLP App.28.

#### **MICHAEL'S MOTION FOR RECONSIDERATION**

Plaintiff moved the circuit court to reconsider its order, granting GFLP's motion to dismiss. R.2442. In its motion for reconsideration, he argued, for the first time, that dismissal was "too severe" and the court should have balanced the policy of giving parties their day in court. R.2464. Plaintiff, however, still maintained that counsel did nothing wrong. R.2467-2473. Plaintiff did not address SDCL 15-6-60(b), as the

controlling standard for his motion for reconsideration. He failed to identify any exceptional circumstances that warranted relief under Rule 60(b), nor did Plaintiff's motion rely on any newly discovered evidence. Plaintiff also did not contend that the circuit court committed manifest error of law or fact. Rather, Plaintiff's motion for reconsideration was simply an attempt to rehash the arguments presented to the court during the previous hearing. R.2463-2474; 2663-2700.

During the hearing, Judge Means advised that she made sure to give Plaintiff an opportunity to be heard and to confirm the appropriateness of her prior ruling. R.2698; GFLP App.65. As the Court noted, Plaintiff's argument was essentially the same as it was before. In the absence of any new information, remorse, or justification, Judge Means expressed that she:

continue[d] to feel as if the behavior here, particularly with regard to confidential medical records was repeated, it was dishonest, it was egregious, and on top of that Mr. Sortland came to court and said it was everybody else's problem and everybody else's mistake and Mr. Welter, while I said you present a much more palatable version of that to me here today, essentially I feel like you're saying the same thing and so nothing really has changed since March 11 to today's date. And so I am not going to reconsider the decision that I made, I made it for what I feel are well founded reasons, I made it because of the things that I was in a unique position to see when I was here in the courtroom and I was interacting with the attorneys, and so I am not going to reconsider my decision . . . .

R.2699; GFLP App.66.

At no point in time did Plaintiff ever destroy, return, or seal Delores' wrongfully obtained medical records. To this day, Plaintiff continues to cite Delores' privileged medical records in their brief.

## **STANDARD OF REVIEW**

SDCL 15-6-41(b) authorizes this Court to dismiss Plaintiff's action for failure to comply with the court rules. It is also well-established that it is the "inherent power of a court to levy sanctions in response to abusive litigation practices." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765 (1980); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-44 (1991) (recognizing the court's inherent power to impose sanctions). The court has broad discretion in imposing sanctions. *State v. Guthrie*, 2001 S.D. 89, ¶ 5, 631 N.W.2d 190, 193 ("The imposition of sanctions by the trial court is reviewed under an abuse of discretion standard."). Dismissal as a sanction must be due to willfulness, fault, or bad faith. *Storm v. Durr*, 2003 S.D. 6, ¶ 16, 657 N.W.2d 34, 38.

This Court reviews the dismissal of a case for discovery sanctions under SDCL 15-6-41(b) for an abuse of discretion. *Olson v. Huron Regional Medical Center, Inc.*, 2025 S.D. 34, ¶ 17, 24 N.W.3d 405, 412. "An abuse of discretion 'is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary and unreasonable.'" *Frye-Byington v. Rapid City Med. Ctr., LLP*, 2021 S.D. 3, ¶ 10, 954 N.W.2d 314, 317 (quoting *Johnson v. United Parcel Serv., Inc.*, 2020 S.D. 39, ¶ 27, 946 N.W.2d 1, 8).

The Court reviews the circuit court's factual findings "under the clearly erroneous standard" and applies a de novo standard when reviewing conclusions of law. *Dunham v. Sabers*, 2022 S.D. 65, ¶ 27, 981 N.W.2d 620, 633 (citation omitted).

## **ARGUMENT**

This case boils down to a simple question: whether dismissal of a case is an acceptable sanction where an attorney *blatantly ignores* and *conceals* timely objections

and assertion of privileges in order to obtain privileged medical records of a non-party, reviews the medical records, files an amended pleading containing such confidential information in the public record, and then fails to accept any responsibility or accountability for his conduct? If the use of the court's authority to intentionally violate the privacy rights of a third-party and obtain their privileged medical information, over their objection, does not rise to the level warranting dismissal, what would?

The circuit court was in a unique position to weigh the evidence and interact with Attorney Sortland. The circuit court properly considered Attorney Sortland's conduct within the context of the litigation, the Rules of Civil Procedure, and the nature of the documents that he sought and improperly obtained. The court weighed its options concerning Plaintiff, but felt compelled, based on the egregious nature of Plaintiff's counsel's conduct and refusal to accept responsibility, that dismissal was the appropriate sanction. Judge Means' ruling gave effect to the Rules of Civil Procedure, the privacy rights of others, and the rules of professional conduct. While severe, her ruling was reasonable and necessary to try to ensure such conduct would not be repeated. *Figueroa Ruiz v. Alegria*, 896 F.2d 645, 649 (1st Cir. 1990) (quoting *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643 (1976) ("even where a lesser sanction might suffice to forestall any further misconduct by a 'duly chastened' party in the case at hand, "the most severe in the spectrum of sanctions provided by statute or rule must be available to the district court ... to deter those who might be tempted to such conduct in the absence of such a deterrent.")).

Plaintiff's arguments to this Court confirm the appropriateness of Judge Mean's ruling. Michael continues to downplay Attorney Sortland's conduct and claims Attorney

Sortland did nothing wrong. Plaintiff attempts to sidestep the gravity of Attorney Sortland's conduct by arguing the privileged information was relevant, the subpoena was timely noticed, and GFLP's timely objections were not valid nor brought before the court prior to the deadline for compliance with the subpoenas. He also argues the circuit court erred by dismissing his case and by not entering findings of fact and conclusions of law.

Despite his arguments, Plaintiff does not address the actual issue in the case—Attorney Sortland had no right to disregard GFLP's objections or conceal the objections from Prairie Lakes. The circuit court held that Attorney Sortland "blatantly and in bad faith disregarded the rules that are in place and the statutes that are in place to protect privileged and private medical records[.]" R.2504; GFLP App.27. Attorney Sortland took a "no harm no foul" approach and showed no remorse for his violations of fundamental principles of discovery and professionalism. Given Attorney Sortland's conduct and attitude, the circuit court's factual assessment was not clearly erroneous. Its conclusion that Attorney Sortland violated the rules of discovery was correct. Dismissal of the action was an appropriate sanction and cannot constitute a fundamental error of judgment, nor was it a choice outside of the range of permissible choices. The circuit court's decision to dismiss Plaintiff's case should be affirmed.

#### **I. The Circuit Court's Factual Findings were Not Clearly Erroneous**

The facts underlying GFLP's Motion to Dismiss are not disputed. Plaintiff does not identify any factual finding that was erroneous. Plaintiff admits:

- His counsel's repeated failure to comply with Rule 45 (Appellant's Brief at 7-8; R.1937-1938).
- His counsel proceeded to issue subpoenas for Delores' medical records and tried to solicit privileged information from her psychiatrist, knowing that such information was privileged and objections were previously raised (Appellant's Brief at 8-10);

- GFLP timely moved to quash the subpoenas to Delores' medical providers (Appellant's Brief at 9);
- Attorney Sortland "disregarded" GFLP's objections to pursue discovery of Delores' medical records (R.1939 at ¶ 19);
- Attorney Sortland concealed GFLP's objections from Prairie Lakes Hospital in order to obtain Delores' privileged medical records (Appellant's Brief at 10; R.1939); and
- Attorney Sortland incorporated the privileged information into a publicly filed document (Appellant's Brief at 11).

In addition, while the tone and cavalier nature of attorney Sortland's demeanor cannot be seen in the transcript, the fact that Plaintiff showed no contrition, remorse, or accountability for his conduct was apparent to Judge Means. There is a substantial evidentiary basis to establish Attorney Sortland's conduct and for the Court's concern that Attorney Sortland would do it again if given the opportunity.

Plaintiff presented no evidence to establish the circuit court's finding that Attorney Sortland's conduct was egregious and that he acted intentionally and in bad faith was clearly erroneous. Instead of challenging any factual or evidentiary basis for the court's ruling, Plaintiff contends that the Court erred by not entering findings of fact and conclusions of law. Plaintiff claims that entering judgment under Rule 41(b) requires entry of findings of fact and conclusions of law in accordance with SDCL 15-6-52(a). Appellant's Brief at 14. However, neither SDCL 15-6-41(b) nor SDCL 15-6-52(a) supports Plaintiffs' conclusions.

Rule 52(a) provides in relevant part:

*In all actions tried upon the facts without a jury or with an advisory jury, the court shall, unless waived as provided in § 15-6-52(b), find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to § 15-6-58. In granting or refusing temporary restraining orders or preliminary injunctions, the court shall similarly set*

forth the findings of fact and conclusions of law which constitute the grounds of its action.

(emphasis added). Rule 52(a) requires findings of fact and conclusions of law in four scenarios: (1) actions tried upon facts without a jury; (2) actions tried with an advisory jury; (3) when granting or refusing a temporary restraining order; and (4) when granting or refusing a preliminary injunction. *Id.* None of these scenarios are applicable here.

Likewise, Rule 41(b) contains a provision that provides for entry of findings of fact and conclusions of law—"in an action tried by the court without a jury." SDCL 15-6-41(b). Entry of findings of fact and conclusions of law are only required under Rule 41(b) and Rule 52(a) where an action is tried to the court, which did not happen in this case.

Under Plaintiff's theory, findings of fact and conclusions of law would be required in every case in which the Court granted a motion to dismiss or summary judgment. Although it may be preferable for the trial court to state the reasons for its dismissal, findings of fact and conclusions of law are not required by the Rules of Civil Procedure.

Plaintiff fails to present any controlling authority to support its argument that the circuit court was required to enter findings of fact or conclusions of law when granting GFLP's motion under Rule 41(b).

## **II. The Circuit Court's Legal Conclusions were Correct**

At the heart of this case is whether Attorney Sortland violated the rules and statutes that are in place to protect privileged and private medical records. Rather than address the substance of this issue, Plaintiff maintains a "no harm no foul" approach by attacking the merits of GFLP's objections. Plaintiff's approach reflects his continued

failure to appreciate the significance of Attorney Sortland's conduct and confirms the circuit court's concerns for the need to impose a significant sanction in order to deter future misconduct.

**A. Attorney Sortland Violated Explicit Rules and Fundamental Safeguards Implemented to Protect the Privacy Rights of Others and Prevent Abuse of the Subpoena Power**

An attorney possesses and exercises "substantial power and authority." *In re Discipline of Laprath*, 2003 S.D. 114, ¶ 42, 670 N.W.2d 41, 55. Attorneys, as officers of the court, have the capacity to issue subpoenas in the name of the court. SDCL 15-6-45(a). "The judicial system relies on attorneys to adhere to lawful and ethical standards of conduct and the Court trusts that they will not abuse their notice." *Biocore Medical Techs, Inc. v. Khosrowshahi*, 181 F.R.D. 660, 667 (D.Kan. 1998). "The subpoena power is a substantial delegation of authority to private parties, and those who invoke it have a grave responsibility to ensure it is not abused." *Theofel v. Fary-Jones*, 359 F.3d 1066, 1074 (9th Cir. 2004). As an officer of the court, Attorney Sortland was responsible for knowing and complying with the discovery rules, and he was prohibited from abusing them. By signing a subpoena in the name of the court, Attorney Sortland represented that the subpoena was being issued consistent with the Rules of Civil Procedure and warranted by existing law. SDCL 15-6-11(b).

"A subpoena duces tecum is subject to the provisions of §§ 15-6-26(c) and 15-6-45(b)." *Public Entity Pool for Liability v. Score*, 2003 S.D. 17, ¶ 21, 658 N.W.2d 64, 72. SDCL 15-6-26(c) allows for protective orders, authorizing a court to make "any order" that justice requires to protect a person from, among other things, "annoyance, embarrassment, oppression, or undue burden or expense[.]" Rule 45(b) plainly requires that a motion to quash be filed "promptly and in any event at or before the time specified

in the subpoena for compliance therewith.” SDCL 15-6-45(b). Thereafter, “the court” “may: (1) quash, modify the subpoena if it is unreasonable and oppressive; . . . .” *Id.*

In order to ensure an opposing party (or a third-party) has the opportunity to raise an objection, Rule 45(b) mandates that “[b]efore a subpoena commanding the production of documentary evidence is served on the person to whom it is directed, a notice and copy of the subpoena must be served on each party to the matter pending.” SDCL 15-6-45(b). The notice requirement was implemented by the South Dakota Supreme Court in 2019 and makes SDCL 15-6-45(b) consistent with its federal counterpart. 2020 S.D. Laws Ch. 246 (SCR 19-16); *compare* SDCL 15-6-45(b), *with* FED. R. CIV. P. 45(b)(1); South Dakota Supreme Court Special Rules Hearing No. 140 hearing testimony.<sup>3</sup> The reason for adding the notice requirement to SDCL 15-6-45(b) was to make it “crystal clear” that notice must be given to the opposing parties. South Dakota Supreme Court Special Rules Hearing No. 140 at 11:48–12:16. The purpose of requiring notice to the opposing parties is to give them an opportunity to object. *See* FED. R. CIV. P. 45, Advisory Committee Notes, 1991 Amendment.

“The opportunity to object to a subpoena is a vital protection of Rule 45[J]” *In re Marriage of Wiggins*, 279 P.3d 1, 8 (Colo. 2012). According to the federal advisory committee notes regarding this provision of Federal Rule 45: “[t]he purpose of such notice is to afford other parties an opportunity to object to the production or inspection, or to serve a demand for additional documents or things.” FED. R. CIV. P. 45, Advisory Committee Notes, 1991 Amendment.

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<sup>3</sup> The recording of Special Hearing No. 140 can be accessed through the following link: [https://ujs.sd.gov/uploads/sc/hearing/2019\\_08\\_26\\_Rules\\_Hearing.mp3](https://ujs.sd.gov/uploads/sc/hearing/2019_08_26_Rules_Hearing.mp3)

One court explained:

The purpose of the requirement of prior notice to the parties "is to afford other parties an opportunity to object to the production or inspection, or to serve a demand for additional documents or things." FED. R. CIV. P. 45, Notes of Advisory Committee on Rules. "[C]ompliance with the notice provision is not a mere formality but serves the important function of streamlining discovery in order to alleviate duplication or delays." *Callanan v. Riggers & Erectors, Inc.*, 149 F.R.D. 519, 520 (D. Vi. 1992).

When a party fails to receive prior notice of the information sought from a non-party, a party is deprived of its greatest safeguard under the Rule, that is, the ability to object to the release of the information prior to disclosure. In addition, when an attorney misuses his or her power under Rule 45 to command a non-litigant to produce documents in a lawsuit to which he or she is a stranger by failing to give appropriate notice to the parties, public confidence in the integrity of court processes is eroded.

*Potomac Elec. Power Co. v. Electric Motor Supply, Inc.*, 190 F.R.D. 372, 379-80 (D.Md. 1999) (internal citations omitted); *see also United States v. Santiago-Lugo*, 904 F.Supp. 43, 47 (D.P.R. 1995) ("This precautionary measure has been inserted in the rule to prevent ex parte abusive and illegal use of the subpoena power. The purpose of this notice is to afford other parties . . . the opportunity to object to the production or inspection." (citations omitted)). The notice requirement in Rule 45(b) was enacted to allow opposing party an opportunity to assert objections. Pursuant to Rule 45(d), "[i]f objection is made, the party serving the subpoena shall not be entitled to inspection and copy of the materials except pursuant to an order of the court from which the subpoena was issued." SDCL 15-6-45(d).

Because the documents requested were medical records of a non-party, Plaintiff's counsel was required to comply with the additional safeguards to ensure the physician-patient privilege was not violated. In this context, Plaintiff's counsel was required to

ensure his subpoenas were HIPAA compliant and Plaintiff could not seek or obtain production of the same if he knew objections were raised.

The Supreme Court has long-recognized the importance of the physician/patient privilege and the public policy favoring the privilege. *Ferguson v. Thaemert*, 2020 SD 69, ¶ 26, 952 N.W.2d 277, 284. The party asserting a claim of waiver has the burden of establishing a waiver of a privilege. *State v. Catch the Bear*, 352 N.W.2d 640, 647 (S.D. 1948). The privilege applies until and unless the Court determines otherwise. As such, "it is crucial that a patient/party, who believes a subpoena duces tecum issued by an opposing party to obtain medical records is unreasonably broad or otherwise violates the discovery rules, have an adequate and meaningful opportunity to object to the subpoena before any medical records are disclosed." *Keplinger v. Va. Elec. and Power*, 537 S.E.2d 632, 644 (W.V. 2000).

The *Keplinger* court's analysis is directly applicable and consistent with the requirements of HIPAA. HIPAA includes additional safeguards to ensure the protection of private medical records and other protected health information. 42 U.S.C. 1320(d)(4). HIPAA permits a covered entity to disclose protected health information in certain circumstances. *See* 45 CFR § 164.512(e)(1)(ii). Under 45 CFR § 164.512(e)(1)(ii), a covered entity is permitted to "disclose protected health information in the course of any judicial or administrative proceeding" in response to a subpoena if the entity has been provided assurance that notice has been given to the party whose health information is being requested or that steps have been taken to obtain a qualified protective order. 45 CFR § 164.512(e)(1)(ii)(A), (B).

Thereafter, 45 CFR § 164.512(e)(1)(iii) outlines the assurance that is required to satisfy the requirements under 45 CFR § 164.512(e)(1)(ii), and requires that the party seeking the protected medical information confirm (1) they made an attempt to give notice to the individual; (2) the notice informed the individual of the litigation; (3) the time for objections has elapsed; and (4) no objections were filed or all objections have been resolved by the court.

Here, GFLP received notice of the subpoenas duces tecum on Friday at 4:04 p.m. It filed its Motion to Quash and for Protective Order the following Monday at 3:44 p.m. It is undisputed that GFLP's motion was promptly filed in compliance with Rule 45(b). Thereafter, Plaintiff could not proceed with obtaining Delores' medical records from any of Delores' medical providers. The only way to give effect to the purpose of the notice requirement, the plain language of Rules 45(b) and 45(d), and the privacy rights of Delores is to prohibit Attorney Sortland from obtaining the medical records until the circuit court ruled in Plaintiff's favor on GFLP's objections.

Yet, Attorney Sortland took it upon himself to determine the validity of GFLP's objections. He took the decision away from the court and avoided his burden of proving that the privilege was waived. Attorney Sortland admitted that he "disregarded" the objections. He admitted that he did not inform Prairie Lakes of the objections. His actions resulted in the issuance of a subpoena and production of privileged medical records.

The circuit court did not err by finding that Attorney Sortland's conduct violated the Rules of Civil Procedure, Delores' privacy, HIPAA, and professionalism.

**B. Attorney Sortland's Conduct Violated the Rules of Professional Conduct**

While the circuit court did not expressly state that Attorney Sortland's conduct violated the Rules of Professional Conduct, the undisputed facts confirm such violations. *Abata v. Pennington Cnty Board of Comm'r's*, 2019 S.D. 39, ¶ 8, 931 N.W.2d 714, 718 (“We can affirm the circuit court for any basis which supports the court’s ultimate determination.”).

Seeking discovery of information that Plaintiff knew they were not entitled to receive violates the Rules of Civil Procedure and violates Rule 4.4(a) of the South Dakota Rules of Professional Conduct. Rule 4.4(a) states:

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

S.D. Rules of Pro. Conduct R. 4.4. Comment 1 to Rule 4.4 provides that a lawyer may not “disregard the rights of third persons.” *Id.* The comment recognizes that it is “impractical to catalogue all such rights,” but states that such rights include “legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.” *Id.*

Plaintiff’s counsel intentionally violated Rule 4.4 by misleading others in order to obtain Delores’ privileged medical records. He then intentionally incorporated privileged information from such records into a publicly-filed document.

**C. Plaintiff's Argument in Support of Attorney Sortland's Conduct is without merit**

Rather than addressing Attorney Sortland’s misconduct, Plaintiff argues that GFLP, despite timely filing its Motion to Quash, “failed to properly bring its objection

before the circuit court prior to the subpoenas' deadline for compliance[.]'" Appellant's Brief at 20. Plaintiff's claim that the objections were untimely is premised on his flawed contention that for an objection to be "valid," it must be raised, heard, and ruled on by the Court before the time for compliance. According to Plaintiff, the substantive rights of Delores for the protection of her privileged and confidential medical information were contingent upon the unilateral date selected by Plaintiff for compliance with the subpoena and the circuit court's calendar. No rule requires a hearing on a motion to quash be held before the compliance deadline.

Under Plaintiff's rationale, a party could serve a subpoena duces tecum for a third-party's medical information and require compliance the next day, and, even if the resisting party is able to prepare and file a motion to quash before the compliance deadline, the objections would be deemed moot and overruled unless the motion was ruled on by the court before the compliance deadline. Plaintiff's argument ignores the plain language of Rule 45, which prohibits inspection of records if an objection is timely filed, and the purpose of the notice requirement—which is to provide parties the opportunity to raise objections and have them heard before production of possibly privileged documents.

Here, Attorney Sortland was trying to negotiate a protective order with GFLP's counsel while at the same time misleading Prairie Lakes into thinking there was no objection to producing Delores' privileged medical records. Further, there is nothing in the rules that prevented Plaintiff from obtaining a hearing date.

### **III. The Circuit Court Did Not Abuse its Discretion by Dismissing Plaintiff's Case**

Dismissal under Rule 41(b) is appropriate for egregious, blatant, and bad faith violations of court rules. “[D]ismissal under Rule 41(b) depends upon whether a plaintiff's conduct ‘rises to the level of egregiousness which should preclude the case from proceeding.’” *Olson*, 2025 S.D. 34, ¶ 33 (quoting *Swenson v. Sanborn Cnty. Farmers Union Oil Co.*, 1999 S.D. 61, ¶ 22, 594 N.W.2d 339, 345).

Although admittedly a severe sanction, Plaintiff concedes that dismissal sanctions are appropriate where a party/counsel engage in repeated willful misbehavior. Appellant's Brief at 28. This Court has not addressed a situation that dealt with conduct as significant, egregious, and blatant as Attorney Sortland's conduct in this case. In fact, counsel is unable to locate any published opinions that address this exact situation, where an attorney intentionally ignored and concealed objections in order to obtain privileged medical records of a non-party. Attorney Sortland's conduct was intentional, blatant, and resulted in the violation of Delores' rights to privacy under HIPAA and the physician-patient privilege. The abuse of the Court's subpoena power to invade the medical privacy of a third-party, over their objection, and inference of willingness to repeat the same conduct in the future is sufficiently egregious to warrant dismissal.

Under similar circumstances, the court in *C.B.H. Resources, Inc. v. Mars Forging Co.*, 88 F.R.D. 564 (W.D. Pa. 1983), dismissed plaintiff's case after the plaintiff abused the process of the court under Rule 45 and secured a witness' presence and testimony by using threats and a bogus subpoena. *Id.* at 568 – 69. While dismissal was “extremely harsh” – plaintiff's behavior was “sufficiently egregious” to warrant it. *Id.*; *see also*

*Bellok v. Koths*, 415 N.W.2d 18 (Mich. Ct. App. 1987) (affirming dismissal sanction based on plaintiff's ongoing obstruction of discovery).

In granting the defendants' motion to dismiss, the court, in *Murphy v. Bd of Educ. of Rochester City School Dist.*, 196 F.R.D. 220, 226 (W.D.N.Y. 2000), found plaintiff's counsel's issuance of subpoenas without service on the other parties "constituted clear evidence of bad faith, and were taken for the improper purpose of obtaining and reviewing the documents in question before opposing counsel had the opportunity to object." *Id.*

Attorney Sortland's conduct was more egregious. He concealed GFLP's objections from Prairie Lakes in order to obtain privileged medical records. Plaintiff's argument concerning the "relevancy" of the documents, the validity of GFLP's objections, and standing are after the fact attempts to justify his conduct. Attorney Sortland knew it was not his role to rule on the objections. He knew that Delores' medical records were subject to the physician-patient privilege and HIPAA's privacy protections. He knew Delores was not a party—and that she could not put her medical condition at issue. He knew Attorney Evans represented GFLP and Delores—just as Attorney Evans had done since 2006—and that Attorney Evans on behalf of Delores had objected to Sortland's attempt to obtain Delores' medical records.

Plaintiff's attempts to minimize Attorney Sortland's conduct cannot stand in light of Attorney Sortland's own knowledge and understanding of the purpose of Rule 45's notice requirement. In a prior case, Attorney Sortland moved to have a case dismissed because opposing counsel issued subpoenas for depositions without giving notice to him. See *Ancona Escrow, Inc.*, 2006 WL 8443153. In that case, Attorney Sortland stated, "[a]

party who fails to give opposing counsel prior notice before serving subpoenas of documents or for a deposition violates the governing rule." R.2424. Attorney Sortland argued Rule 45 "could not be clearer," "when a party fails to receive prior notice of the information sought from a non-party, *a party is deprived of its greatest safeguard under the Rule, that is, the ability to object to the release of the information prior to the disclosure.* In addition, when an attorney misuses his or her power under Rule 45 to command a non-litigant to produce documents in a lawsuit to which he or she is a stranger by failing to give appropriate notice to the parties, public confidence in the integrity of the court processes is eroded." R.2425 (quoting *Potomac Elec. Power Co.*, 190 F.R.D. at 380) (emphasis added).

Attorney Sortland even cited to *Spencer v. Steinman*, 179 F.R.D. 484 (E.D.Pa. 1998), R.2425, wherein, the court expressly rejected the same "no harm no foul" approach taken by Plaintiff:

[Plaintiff's attorney] is mistaken in asserting a 'no harm, no foul' defense. *The risks attached to the misuse of the subpoena power are great. Under this delegation of public power, an attorney is licensed to access, through a non-party with no interest to object, the most personal and sensitive information about a party. By failing to receive prior notice of the information sought from the non-party, a party is deprived of its greatest safeguard under the Rule, i.e., the ability to object to the release of the information prior to its disclosure. Therefore, the loss of the opportunity to object prior to the release of the information caused injury to Steinman regardless of whether the information ultimately was turned over to his counsel.*

Moreover, the injury resulting from attorney misuse of the subpoena power is not limited to the harm it inflicts upon the parties. Rather, misuse of the subpoena power also compromises the integrity of the court's processes. *Under Rule 45, an attorney, as an officer of the court, is delegated the power to command a non-litigant to produce documents in a lawsuit to which he or she is a stranger. With the power to coerce production goes the 'increased responsibility and liability for the misuse of the power.'* *When the power is misused, public confidence in the integrity of the*

*judicial process is eroded. Therefore, the failure to provide prior notice to Steinman of the subpoenas to non-parties also caused injury to the public.*

*Id.* at 487-88 (emphasis supplied; citations omitted).<sup>4</sup>

Attorney Sortland was aware of the importance of GFLP's objections and the right to have them heard before continuing discovery efforts. Attorney Sortland knew "no harm, no foul" was not an excuse for his misconduct. He knew he could not obtain Delores' medical records over her objection, which is why he concealed the objections from Prairie Lakes and mislead them into believing no objections were filed. R.1833-1834.

Attorney Sortland also knew of HIPAA and the requisite notice requirements imposed by HIPAA. In the January 6, 2025, subpoena issued to Lee Hendricks, PsyD, Attorney Sortland specifically noted that "THIS SUBPOENA IS GOVERNED BY HIPAA. The attorney for the person who is the subject of the information about this request has been notified so that she has a chance to object to the disclosure or seek a qualified protective order for the information from the court." R.1143; App.41. Sortland knew Rule 45 and HIPAA's requirements for advance notice and that any objections be ruled on prior to issuing documents—yet he simply ignored GFLP's objections in order obtain and use the Prairie Lakes records that he was not legally entitled to.<sup>5</sup>

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<sup>4</sup> The Order issued in *Spencer* was vacated in part upon reconsideration because, unlike in the present case, the record did not support a finding of bad faith for knowingly or intentionally directing the issuance of subpoenas to non-parties without notice to opposing counsel. *Spencer v. Steinman*, 96-cv-1792-ER, 1999 WL 33957391 (E.D.Pa. Feb. 26, 1999). Notwithstanding, the court's initial assessment concerning Rule 45 remains valid.

<sup>5</sup> Notably, Attorney Sortland did not provide Counsel for Delores with a Notice of Intent to serve the subpoena, nor did he provide any notice before serving a subpoena on Dr.

When these major violations and invasion of Delores' privacy rights were brought to the attention of the circuit court, Attorney Sortland and Plaintiff refused to take accountability and insisted that it was everyone else's problem. This is not a situation where Plaintiff's complaint was dismissed due to a legitimate dispute about an "alleged violation" of the Rules of Civil Procedure. Appellant's Brief at 29. Plaintiff still fails to appreciate the seriousness of Attorney Sortland's misconduct. R.2504-2505.

The circuit court found that Attorney Sortland intentionally and blatantly failed to comply with the discovery rules. The court found that such conduct was egregious and in bad faith. These findings are not clearly erroneous. Given the severity of this conduct, dismissal was an appropriate and within the range of permissible sanctions available to the circuit court. Even if this Court would not have imposed the same sanction, one cannot dispute that "a judicial mind, in view of the law and circumstances, could have reasonably reached that conclusion."

#### **IV. No Lesser Sanctions are Warranted nor Were They Requested from the Circuit Court**

Plaintiff argues that dismissal was too extreme because this "was the first time the discovery dispute was heard by the court" and that Attorney Sortland was never warned that abusing discovery and infringing on the rights of third-parties could result in the dismissal of his case. Appellant's Brief at 29-30. Plaintiff claims he needs this Court to provide "parameters" for "discovery to guide counsel in the future." *Id.* at 30. Plaintiff never argued that dismissal was too severe or that the court needed to provide parameters for discovery in response to GFLP's motion to dismiss.

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Hendricks. He also did not provide any notice of the fact that the subpoena was ever served on Dr. Hendricks. R.1147.

The “parameters” for discovery were *never* raised to the circuit court and the severity of dismissal was only argued in support of Plaintiff’s motion for reconsideration. To the extent that the argument was not raised to the circuit court, it has been waived. *Alvine Family Ltd. P’ship v. Hagemann*, 2010 S.D. 28, ¶ 21, 780 N.W.2d 507, 514 (“We have consistently held that this Court may not review theories argued for the first time on appeal.”). Because the challenge to the severity of the sanction was raised in Plaintiff’s motion for reconsideration, it must be viewed in the context of Rule 60(b), which is reviewed for an abuse of discretion. *Hiller v. Hiller*, 2015 S.D. 58, ¶ 21, 866 N.W.2d 536, 543 (“The circuit court’s decision to grant or deny relief under Rule 60(b) will not be disturbed on appeal unless the circuit court abused its discretion.”).

Rule 60(b) provides six specific instances where a court may reconsider and relieve a party from a prior judgment:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under § 15-6-59(b);
- (3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) The judgment is void;
- (5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (6) Any other reason justifying relief from the operation of the judgment.

SDCL 15-6-60(b). “Relief under SDCL 15-6-60(b) is granted only upon a showing of exceptional circumstances.” *Pesicka v. Pesicka*, 2000 S.D. 134, ¶ 17, 618 N.W.2d 725, 728.

Here, Plaintiff never addressed Rule 60(b)'s requirements and failed to present evidence of mistake, fraud, or any other basis under Rule 60(b) for the circuit court to reconsider its prior ruling. Plaintiff had ample opportunity to argue for a lesser sanction. He failed to do so, and he failed to demonstrate exceptional circumstances to set aside the circuit court's order. Therefore, the circuit court cannot be said to have abused its discretion by denying Plaintiff's motion for reconsideration. *See Hiller*, 2015 S.D. 58, ¶ 24 (affirming denial of motion to reconsider where plaintiff "had ample opportunity to litigate" the issue and failed to do so).

This Court need not tell any party or attorney that they cannot "disregard" an opposing party's objections. The Rules of Civil Procedure plainly provide that if an objection is filed, then the party cannot view the documents that were objected to. SDCL 15-6-45(d). Even without such a Rule, common sense and professionalism illustrate that once a motion to quash is filed, the subpoena is stayed until the court has ruled, and the attorney may not use the subpoena power to obtain documents while the motion to quash is pending. In the same vein, the court should not have to tell a professional that the subpoena power cannot be used arbitrarily or in a manner that violates a recognized legal right or privilege of a third-party. S.D. Rules of Pro. Conduct R. 4.4. This Court should not have to advise a party issuing a subpoena for medical records that the party must inform the health care provider if an objection has been raised—where HIPAA prohibits disclosure of medical records if an objection has been filed.

If the Rules of Professional Conduct, Rules of Civil Procedure, and recognized privileges mean anything, then there must be repercussions for repeated violations of the same. Violations of such rules that are done knowingly, intentionally, and in bad faith,

deserve the strictest of punishments—even if it means that the Plaintiff loses his day in court. Ruling to the contrary tells litigants they can ignore the rules and only receive an admonishment from the court.

**CONCLUSION**

The circuit court should be AFFIRMED.

Dated at Sioux Falls, South Dakota, this 6th day of October, 2025.

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**CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that this Brief of Appellee complies with the type volume limitations set forth in SDCL § 15-26A-66(b)(2). Based on the information provided by Microsoft Word, this Brief contains 9,981 words, excluding the table of contents, table of authorities, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel. This Brief is typeset in Times New Roman (12 point) and was prepared using Microsoft Word.

Dated at Sioux Falls, South Dakota, this 6th day of October, 2025.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing "Brief of Appellee Gibson Family Limited Partnership" was filed and served using the Court's eFile SD system which upon information and belief will send e-mail notification of such filing to:

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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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No. 31073

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MICHAEL A. GIBSON,

Plaintiff/Appellant,

vs.

GREG GIBSON, Individually, JOAN GIBSON, Individually, and GIBSON FAMILY LIMITED PARTNERSHIP, a SOUTH DAKOTA LIMITED PARTNERSHIP; ROBERT M. RONAYNE, AND RONAYNE LAW OFFICE P.C.,

Defendants/Appellees.

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Appeal from the Circuit Court, Third Judicial Circuit  
Codington County, South Dakota

The Honorable Carmen A. Means, Presiding Judge

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**APPELLEE GIBSON FAMILY LIMITED PARTNERSHIP'S APPENDIX**

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Notice of Appeal filed April 25, 2025

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1 STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
 2 )  
 3 COUNTY OF CODINGTON ) THIRD JUDICIAL CIRCUIT  
 4

5 Michael Gibson, )  
 6 Plaintiff, ) Motion Hearing  
 7 vs. ) Civ. 23-350  
 8 Greg Gibson, individually, )  
 9 Joan Gibson, individually, )  
 10 and Gibson Family Limited )  
 11 Partnership, a South Dakota )  
 12 Limited Partnership; Robert )  
 13 M. Ronayne, and Ronayne Law )  
 14 Office, P.C., )  
 15 Defendants.

16 BEFORE: THE HONORABLE CHAMON MEANS  
 17 Circuit Court Judge  
 18 Watertown, South Dakota  
 19 March 11, 2025

20 APPEARANCES:

21 For Michael Gibson: Mr. Paul Sortland  
 22 Sortland Law Office  
 23 Minneapolis, MN  
 24  
 25 For Greg and Joan Gibson: Mr. Sander Morehead  
 26 M. Jake Schneider  
 27 Woods, Fuller, Shultz & Smith  
 28 Sioux Falls, SD  
 29 For Robert Ronayne: Mr. Zachary Peterson  
 30 Richardson, Wyly, Rice, Sauck & Klob  
 31 Aberdeen, SD

1 For Schwan  
2 Financial: Mr. Joe Erickson  
3 Watertown, SD

4 For Prairie Lakes: Mr. James Raby  
5 Watertown, SD

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GFLP APP. 2

1                   THE COURT: I am mindful that there are civil cases  
2 where there are more attorneys in the courtroom than there are  
3 right now, but I am not sure I have had any such cases, so I'm  
4 going to start my record by saying we are here today for motions  
5 hearings in the matter of Michael A. Gibson versus Gregory  
6 Gibson, Joan Gibson, Gibson Family Limited Partnership, Robert  
7 Ronayne and Ronayne Law Office. Let's have counsel note their  
8 appearances here.

9                   MR. SORTLAND: Your Honor, my name is Paul Sortland  
10 appearing on behalf of the plaintiff Michael Gibson and with me  
11 is my local counsel Grant Alvire.

12                   THE COURT: All right. Who's next?

13                   MR. REDD: Ryan Redd on behalf of Delores Gibson and  
14 the Gibson Family Limited Partnership.

15                   MR. PETERSON: Zachary Peterson on behalf of Rob  
16 Ronayne and Ronayne Law Office.

17                   MR. MOREHEAD: Sander Morehead and Jake Schneider on  
18 behalf of Greg and Joan Gibson.

19                   MR. ERICKSON: Joe Erickson on behalf of the Schwan  
20 Financial Group, a subpoenaed party.

21                   MR. RODY: And James C. Rody on behalf of Prairie  
22 Lakes making a special appearance and we were a subpoenaed  
23 party.

24                   THE COURT: All right. Have we taken account of  
25 everybody then? All right. So as I see it there are a number

1 of motions that need to be decided today, were any counsel  
2 intending on calling witnesses for this hearing? I reviewed the  
3 submissions and I didn't get any sense from the submissions that  
4 live testimony was to be heard, but I'm also aware the courtroom  
5 is more full than I sometimes see it and so I'm just going to  
6 ask about that. Mr. Redd, what do you have to say on that  
7 issue.

8 MR. REDD: I do not intend on calling any witnesses,  
9 your Honor.

10 THE COURT: Mr. Peterson?

11 MR. PETERSON: No, your Honor.

12 THE COURT: Mr. Morehead?

13 MR. MOREHEAD: No, your Honor.

14 THE COURT: All right. How about you Mr. Sortland?

15 MR. SORTLAND: No.

16 THE COURT: All right. Then I would like to take the  
17 motions regarding the discovery issues and specifically the  
18 motion for sanctions against plaintiff and plaintiff's counsel  
19 for discovery abuses. Who of the moving parties would like to  
20 take lead on that argument?

21 MR. REDD: I'll take the lead, your Honor.

22 THE COURT: Go ahead Mr. Redd.

23 MR. REDD: Thank you. The Gibson Family Limited  
24 Partnership has brought a motion for sanctions in the form of  
25 dismissal of this lawsuit or other relief the court deems just.

1 and equitable as it relates to numerous repeated and blatant  
2 violations of discovery, rules of civil procedure, and other  
3 applicable rules, and I start with just the fundamental  
4 principal that all I think lawyers have which is practice of law  
5 is a privilege. The right to be here in front of the Court is  
6 not something that is easy to ask or given freely. Lawyers  
7 swear an oath to respect the courts, respect others, that they  
8 won't abuse their authority, they won't abuse their role as an  
9 officer of the Court in order to violate other people's rights  
10 or misuse the process in order to obtain information that  
11 they're not otherwise entitled to. Another caveat relevant to  
12 today is as a pro hac vice member of the court, an attorney  
13 swears that they're going to be not only competent but they're  
14 not licensed in this state but they'll read our rules, comply  
15 with the rules, and act according to the rules as it applies in  
16 front of the this Court, and at issue today is again the  
17 repeated violations of those rules, the violations of the  
18 safeguards to insure what is really at issue is the right to  
19 privacy and the privilege to protected health information of  
20 Delores Gideon. Throughout the discovery in this case I think  
21 Mr. Scotland, plaintiffs have issued 30 subpoenas, in our brief  
22 we outlined all the technical deficiencies in the subpoenas,  
23 failure to comply with the notice requirements, the signing  
24 issues, there's those problems. So we've got bigger fish to fry  
25 so I'm not going to harp on those. What is the more important

1 problem and the really why we're here today is because it was  
2 the plaintiff's counsel's use of this Court's authority in order  
3 to wrongfully obtain Miss Gibson's privileged medical records  
4 from her healthcare providers. As I'll address in more detail  
5 soon, at the least subpoenas were issued to medical providers  
6 for records, objections were made, those objections were  
7 ignored, records were obtained and those records were reviewed,  
8 information from those privileged records was incorporated into  
9 an amended complaint and then it was published in a public  
10 filing with this Court. Every step of that is problematic and a  
11 violation of Miss Gibson's rights and the rules in front of this  
12 Court, and the real question is why? Why is this happening?  
13 Why are we even here? And as the Court's I think aware Mike  
14 Gibson believes he's not being treated fairly, he's not getting  
15 enough cut, land, money from his parents. It's the same lawsuit  
16 that's been filed twice, the outcome has been the same both  
17 times, the Supreme Court's affirmed. During those other  
18 lawsuits Delores Gibson made clear she wouldn't do business with  
19 Mike Gibson. She loves him because he's her son. That's where  
20 it ends. As a general partnership partner the Supreme Court  
21 stated she doesn't have to explain her decisions but she  
22 certainly has justification for not wanting to do business with  
23 Mr. Mike Gibson, whether it was the 6 hundred or so thousand  
24 dollars he stole, forged checks, embezzlement, lying to her,  
25 suing her, you know, overall she's scared of him, doesn't want

1 to be around him. She doesn't trust him. That's why she has  
2 made the decision she has made in relation to this partnership.  
3 That's why she doesn't trust him. Brings us to this case, same  
4 lawsuit, same problem, this time around instead of suing Dolores  
5 Gibson Mike goes the partnership and his brother to accomplish  
6 the same thing, alleged partnership assets aren't being  
7 distributed fairly. He didn't name Dolores. That's a strategic  
8 move. He sued his mom twice before, lost twice before, apparent  
9 legal decision not to name her. She's not a party to this  
10 lawsuit, she's not on the caption, yet plaintiffs have contend  
11 and part of the issue here is they keep trying to get her  
12 medical records which are privileged under South Dakota Law.  
13 She's not a party, if a party puts their medical records at  
14 issue you waive it, for the purpose that it's been put at issue.  
15 She is not. Which gets us to kind of the timeline of when  
16 things went off the rails. We have May of 2024 I believe there  
17 was 8 subpoenas are issued, served, and no one knows about it.  
18 Plaintiff didn't tell anyone, no party learned of it until  
19 after they're served. And I think it was the day before  
20 production was due that notice was given. One of those  
21 subpoenas was to Schwan Financial which Mr. Erickson I'm  
22 assuming will address in more detail but that subpoena was  
23 extremely broad, so broad that it would have touched on matters  
24 that would have been Miss Gibson's personal financial  
25 information and her medical information, medical power of

1 attorneys, protected health information as well. Objections  
2 were raised in response to that subpoena, protective order was  
3 sought to protect the discovery of Miss Gibson's personal  
4 financial and medical information in July of 2024. We assumed  
5 that matter had been resolved. Fast forward to September of  
6 2024 we received notice that, a notice of depositions are  
7 emailed out to the parties from Mr. Govtland advising he intends  
8 to take before Gibson's deposition. That notice was resisted,  
9 a motion to quash and a motion for protective order was filed on  
10 the grounds that given Miss Gibson's current medical condition  
11 having her sit for a deposition would be harmful for her health  
12 and that was briefed in detail, that motion has not been heard  
13 yet, as I understand it I think all the parties agree that at  
14 this point in time Miss Gibson is not in a mental capacity to  
15 sit for a deposition, wouldn't be good for her health, it would  
16 be harmful given her current physical condition. So then we  
17 assume that matter is over. It's not. Fast forward to  
18 November, we get subpoenas for Miss Gibson's psychologist and  
19 treating provider to be deposed and to produce her medical  
20 records, there are also subpoenas issued to Prairie Lakes,  
21 Sanford, and one of Miss Gibson's treating providers for her  
22 medical records. These subpoenas were issued November 15,  
23 Friday November 15, 2024. They all requested her medical  
24 records and bills dating back to January 1, 2018, 6 years ago.  
25 No notice was served prior to the subpoenas, the subpoenas were

1 filed in Odyssey at 4:04 p.m. on a Friday, by 2 o'clock on  
2 Monday objections had been filed, a motion to quash, and a  
3 motion for protective order was filed to prevent discovery of  
4 Miss Gibson's private and privileged medical records. The next  
5 day, on November 19 Dr. Hendricks sat for a deposition, he  
6 answered questions related -- limited questions related to the  
7 letters he had written in support of the motion to quash Miss  
8 Gibson's deposition, but when plaintiff's counsel attempted to  
9 get into Miss Gibson's medical history and medical condition  
10 beyond her current state, objections were raised on the record  
11 to prohibit that type of disclosure of her protected  
12 information. And so despite the objections in July, the  
13 subpoenas were still issued for medical health information,  
14 despite the objection to those objections in November, despite  
15 the objections during the deposition of Dr. Hendricks, plaintiff  
16 proceeded in its efforts to obtain records. We learn after the  
17 fact that despite our -- the objections that were asserted,  
18 Prairie Lakes reached out to plaintiff's counsel about producing  
19 records in response to the subpoena and it was represented to  
20 Prairie Lakes that the parties were working together to obtain  
21 Miss Gibson's medical records, there was no dispute, there were  
22 no objections, there's no problems, there's multiple discussions  
23 as reflected in the affidavit of Jodi LeBlanc as to trying to  
24 arrange for the documents to be produced, there was multiple  
25 opportunities for plaintiff's counsel to inform Prairie Lakes

1 Hey, Miss Gibson objected, parties in the lawsuit objected, we  
2 need to resolve these objections before you produce these  
3 records, before we get them. One of the requirements in HIPAA  
4 as outlined in our brief is a medical provider can produce  
5 records in response to a subpoena as long as there's a justified  
6 protective order, adequate assurance has been provided which  
7 includes the assurance that the party being subpoenaed has been  
8 notified and that they have not objected, there's been an  
9 opportunity to object, no objection has been filed. In this  
10 case less than 1 business day after the subpoena is issued  
11 objections were filed, plaintiff's counsel knows about it, he  
12 intentionally doesn't tell Prairie Lakes about the objections  
13 and gets her records from Prairie Lakes. During this time  
14 period, this is early December 2024 there's been no notice that  
15 the subpoenas were ever served, the affidavits of service  
16 weren't filed until I believe it was the end of December. So  
17 the parties are operating under the assumption that we've got  
18 the objection, we're not going to serve the subpoenas because  
19 there's been objection noted, we'll have the Court resolve it  
20 before we move forward. Well that wasn't the case, Mr. Sortland  
21 and plaintiff's counsel had the opportunity to inform Prairie  
22 Lakes of the objections they didn't, they got the records, they  
23 didn't tell anyone the records were produced when they were  
24 produced, they reviewed the records over the objection and over  
25 the request for the subpoenas to be quashed and for the

1 protective order and then they turned around and incorporated  
2 the information from those medical records, put it into a  
3 complaint, files it in with the Court which brings us to this  
4 motion. Every single step of this process has been done in  
5 violation of the rules, technical requirements to the very  
6 straight forward and simple rule that you have to give notice to  
7 opposing party of a subpoena being issued and the reason you  
8 have to give them notice is so they have an opportunity to  
9 object. The reason for the opportunity to object is to insure  
10 the rights and privacy of the parties and third parties are  
11 protected. All that went out the window in this case when  
12 plaintiff's counsel withheld the objections from Prairie Lakes  
13 obtaining Miss Gibson's medical records, reviewed them, and  
14 incorporated them into their complaint. And so the request  
15 being made in this case as sanction is to dismiss the matter and  
16 we understand that dismissal is a severe sanction, probably one  
17 of the most severe sanctions, but the Court does have broad  
18 authority to impose sanctions due to abusive litigation  
19 practices. The failure to comply with the rules, whether civil  
20 rules, rules of professional conduct, the rules that are applied  
21 in front of the trial Court, if there has been an abuse of  
22 practice done in bad faith, dismissal is an appropriate  
23 sanction. There's other sanctions that can be imposed but I  
24 think in this scenario that is appropriate. What's interesting  
25 is in response to our motion to dismiss plaintiff's counsel

1 doesn't really dispute anything that happened, instead their  
2 response has been we were kind of entitled to it anyway, we  
3 don't think your objections were any good, these weren't valid  
4 so who cares? We sent a subpoena and we don't think what you're  
5 objecting to was going to win so be harm no foul. Well that's  
6 not how it works. Plaintiffs aren't the judge, the only one  
7 here with the black robe is your Honor, and the reason for the  
8 notice and the objection requirement is so that some judge can  
9 assess the objections, determining if there's standing,  
10 determine if there's privilege concerns, rule on those matters  
11 before someone's privileged medical records highly sensitive and  
12 highly private are produced to a third party and publicized  
13 afterwards. And ultimately what really makes this more  
14 frustrating is even if there was any aspect of the subpoenas  
15 that was valid or that the objections were invalid, you still  
16 have to go through the process. You can't just make that  
17 determination whether it's a right or wrong objection, valid or  
18 invalid. According to Mr. Gertland's affidavit he says he  
19 disregarded Ed's objections, paragraph 19 of his affidavit from  
20 March 4, the objections we had received from Mr. Evans earlier  
21 were disregarded. Mr. Gertland contends that was because no  
22 date was scheduled for the hearing on those objections and  
23 because the time to object or the time for the Court to rule had  
24 come and gone. And that's a fallacy of an argument, it doesn't  
25 apply to the rules of civil procedure in this case and it's not

1 his determination to make, the Court is the only one who can  
2 rule on the motion to quash and the motion for protective order.  
3 The laws we cited in our briefs make clear that once an  
4 objection is made discovery stops, let the Court rule, protect  
5 the privacy rights of the litigants and the third parties and if  
6 there's something that is correct or not correct or incorrect  
7 the Court will make that determination. Well that's made  
8 discovery stops and that's not what happened in this case. And  
9 then the argument of no harm no foul, even if the objections  
10 were invalid, even if I'm right, who cares? I'm entitled to  
11 these documents, it doesn't matter. Well, as the Spencer versus  
12 Steinman court noted that no harm no foul is not a valid defense  
13 to an abuse of this magnitude or this context as that court  
14 stated, with the power to coerce the protection goes the  
15 increased responsibility and liability for the misuse of power.  
16 With the power is misused public confidence in the integrity of  
17 the judicial process is eroded. Plaintiff's counsel used the  
18 Court's name, used Court's authority to obtain records that it  
19 wasn't entitled to and he knew, plaintiff's counsel knew they  
20 weren't entitled to it. The bad faith in this case which  
21 warrants the dismissal is clearly established. As established  
22 in his affidavit, Mr. Berland's affidavit where he admitted he  
23 disregarded the objections, he made his determination as the  
24 validity of them and he thought they weren't good so he  
25 disregarded them. They did not inform Prairie Lakes of the

1 objections which resulted in Prairie Lakes producing records  
2 that they never would have produced had they been informed of  
3 the objections. And there's no doubt that Mr. Gortland knew  
4 about the notice requirement, the purpose for the notice  
5 requirement or the rational for having the opportunity to object  
6 because when he had an issue as cited in Exhibit 13 to my  
7 affidavit from March 10, when Mr. Gortland had an issue with  
8 someone not giving him notice in a case where a third party was  
9 subpoenaed by opposing counsel he moved for sanctions and he  
10 noted that in his brief which I provided to the Court that  
11 notice is necessary to give parties an opportunity to object to  
12 the release of information prior to the disclosure. He stated a  
13 party who fails to give opposing counsel prior notice before  
14 serving subpoenas of documents or for a deposition violates the  
15 governing rule. In that case he wasn't given notice of a  
16 deposition, it proceeded without him, and he claimed that  
17 dismissal was warranted and no other sanctions would be  
18 sufficient. His exact words in his brief were severe sanctions  
19 should be imposed for the gross disregard of the rules of civil  
20 procedure, defendants submit that monetary sanctions are not  
21 sufficient rather the pretended case of plaintiffs should be  
22 dismissed. Mr. Gortland's aware of the rules, he knows the  
23 rules, he moved for sanctions in a very similar case where the  
24 shoe was on the opposite foot and he told the Court that there's  
25 no remedy other than dismissal that is appropriate. Here his

1 conduct is worse than his opposing counsel in that case because  
2 objections were noted and he just disregarded them. That's even  
3 more blatant than not sending out a notice in advance, not  
4 giving an opportunity. Maybe that happens here or there but to  
5 blatantly disregard the objections knowing the purpose of them,  
6 knowing the rational behind the reason for the notice  
7 requirements in order to obtain highly sensitive privileged  
8 medical records clearly establishes in our view the bad faith  
9 nature of this conduct and warrants by his own arguments in that  
10 case dismissal. And so on those grounds I guess it's our  
11 position that because of these pervasive and egregious discovery  
12 abuses and litigation conduct that this case be dismissed, at  
13 the absolute least we would request that Mr. Sontland's pro hac  
14 be rescinded and any records obtained impermissibly be destroyed  
15 and not able to be used at any future proceeding or trial in  
16 this matter.

17 THE COURT: Thank you Mr. Redd. Mr. Sontland, are you  
18 responding with this issue?

19 MR. SONTLAND: Yes.

20 THE COURT: Go ahead.

21 MR. SONTLAND: Your Honor, I'll focus on the history  
22 of what happened here. The notices of subpoena were filed with  
23 the Court on November 16, 2014. At the same time all counsel  
24 were given notice of that subpoena and we got a second notice  
25 from the Court when it was stamped as being received and

1 therefore we all got the notice through the court system and we  
2 got the copy through the court system when it was issued. I've  
3 heard repeated statements here that they didn't have an  
4 opportunity to object. Well they did have that opportunity and  
5 they did object on November 16 or I'm sorry, they were served on  
6 November 16 and the process server served the objections on  
7 November 19, but on November 18 also that's when Mr. Evans sent  
8 out a notice of objection to this subpoena which demanded  
9 documents not even of his client. The requirements for  
10 objections to a document production subpoena as opposed to a  
11 witness subpoena are found in SDCO 15-6-45(b). This requires  
12 not only that the objection be brought immediately, but also  
13 that the motion be heard by the Court no later than the time for  
14 production. That was never done here. They did not qualify  
15 with any of the requirements of the Court and because of that  
16 the objection could be ignored because as with previous  
17 objections they've just let them stand there without ever  
18 scheduling a hearing, and that cannot go on. And here the  
19 requirement is very specific. It says the objections must be  
20 heard on a timely basis, requires not only the objection be  
21 brought immediately but also that the motion be heard by the  
22 Court no later than the time for production. The time for  
23 production in this was I believe December 6. They had plenty of  
24 time to schedule a hearing, emergency or otherwise with the  
25 Court if they thought that was appropriate. They didn't do

1 that. They knew that they were not -- they didn't have any  
2 standing to object to a subpoena request, only Delores Gibson  
3 had the authority to do that. I don't know what Delores  
4 Gibson's mental ability was at that time. I doubt it was very  
5 high but we've had no opportunity to talk with her, visit her,  
6 or anything like that to get an some idea as to her ability to  
7 testify in this case and her ability to make decisions in this  
8 case. We do know that all of those matters have been referred  
9 over to her daughter LeAnn Swenson, but at the same time that is  
10 prohibited by the very words of the partnership agreement. It  
11 says if Delores Gibson is no longer able to carry out her  
12 duties, those duties don't go to LeAnn Swenson or anybody else,  
13 those are duties shared by the limited partners and we think  
14 that they engaged in this in order to avoid any decision being  
15 made contrary to Greg's plan to get this property distributed to  
16 him. So we have been following the rules, we did give notice,  
17 they took advantage of that notice by filing an objection but  
18 they didn't do anything beyond that. The rules I would assume  
19 that the objecting party would contact the witness to make sure  
20 that they don't provide anything and that was not done in this  
21 instance. And that's another reason to believe what we were  
22 doing was correct. So we do want to help the defendants in  
23 carrying out their ability to thwart our quest for knowledge in  
24 this case and we didn't believe that an objection by somebody  
25 not affected by the discovery would be able to do that. One

1 would assume that they would contact Delores Gibson and have her  
2 object to that if they did not want this to go through. We  
3 assume that the Prairie Lakes Medical Facility would have the  
4 opportunity to talk with Delores Gibson and when we got those  
5 records we assumed that they had. We wouldn't want to contact  
6 Delores Gibson directly because we always -- my client always  
7 gets threatened with restraining orders if he tries to contact  
8 his mother about anything to do with this case. I would point  
9 out that Michael Gibson has a very good relationship with his  
10 mother with respect to other matters but he has concerns about  
11 her mental acuity and capability of understanding these matters,  
12 but of course he hasn't discussed them with his mother  
13 specifically. So that's the background leading up to this. I  
14 don't know why they didn't bring a motion before the Court on a  
15 timely basis, but it wasn't done. There was no motion at all,  
16 not even scheduled, so we didn't get that until January 10, long  
17 after the documents were received and disclosed to opposing  
18 counsel. We gave them these medical records a little bit later  
19 and so there's nothing wrong with what we did. And let's go  
20 back to the duties of Prairie Lakes. I never received any call  
21 from Prairie Lakes. I never spoke with this Jodi. My secretary  
22 didn't speak with Jodi about any specifics to do with in case.  
23 They just discussed how are we going to produce these documents?  
24 And I believe they did it through Drop Box. There was nothing  
25 else discussed between the Prairie Lakes personnel and my

1 secretary Heather. She just got the documents. And then we did  
2 get the medical records as we did and we did notify opposing  
3 counsel that we had received those documents and sent them to  
4 them. The other issues raised by opposing counsel go to the use  
5 of those medical records. There's a couple of innocuous  
6 references to the medical records in the proposed amended  
7 complaint, there hasn't been any motion to redact that at all;  
8 and it simply confirms what we've been told by her treating  
9 physician Dr. Sarah Reiffenberger and by Mr. Hendricks, the  
10 psychologist that's been dealing with her. Miss Gibson has  
11 Covid -- or I'm sorry, has dementia, she's been suffering from  
12 it for quite some time and we want to go into that further  
13 because the time period is not really so much as now, the time  
14 period is back a few years ago in 2022 and that's why we need to  
15 talk more with Dr. Sarah Reiffenberger and Mr. Hendricks and  
16 that's very very important to this case. If they concealed this  
17 transaction without really the knowledge of Delores Gibson and  
18 caused this inequitable transfer of land to go to Michael  
19 Gibson's brother so that he will not receive a fair result in  
20 the partnership after his mother has told him all along that  
21 he's entitled to a fair share, that would be wrong if we  
22 couldn't inquire into what was the condition of Delores Gibson?  
23 I think it's real curious that at the time of closing Delores  
24 Gibson didn't even attend. She was said to have Covid which I  
25 believe, but no one saw her sign that from any of the parties

1 except LeAnn and we haven't had a chance to talk to the notary  
2 public but I don't think we'll find out much there either. So  
3 what her condition was on that September day in 2022 is very  
4 important. I want to keep in mind that this is not the same  
5 case that my client brought 10 years ago. This goes to the  
6 division of the property at the end of the partnership and the  
7 actions by Greg Gibson and his attorney to lead to this inequity  
8 here by hiding the transaction from Michael Gibson. You've got  
9 to remember at the time of this transaction my client's attorney  
10 Shawn Nichols was dealing with Mr. Evans on a proposed equitable  
11 division of the land, that was going nowhere, it went nowhere  
12 for over a year, but all of a sudden they come to this  
13 transaction without Mr. Nichols' knowledge, without Mr. Gibson's  
14 knowledge and this transaction occurs. What in the world was  
15 going on inside Delores Gibson's head? What was the scope of  
16 her comprehension to understand what she was signing and the  
17 inequitable result that would happen to the division of the  
18 property? So that's very important. And so we thought we were  
19 correct in proceeding as we did when the hospital called up and  
20 said how do I get these records to you? I didn't talk to that  
21 lady, my secretary talked with her pursuant to her phone call  
22 and she just instructed her how to send the materials to us or  
23 Drop Box. There might have been a different server used by the  
24 hospital, but it was a Drop Box type thing if it wasn't Drop Box  
25 itself. So the Gibson Family Limited Partnership has still not

1 informed us why they think they have standing in this case. As  
2 a matter of fact they don't. Entities do not have authority to  
3 object to the disclosure of personal medical records. They  
4 themselves placed the condition at issue with the submissions of  
5 these records from Dr. Reiffenberger and Lee Hendricks, so they  
6 really have only themselves to blame. I don't know whether I  
7 blame them or not but that's important information that we need  
8 to get. So the medical records are highly relevant and we had  
9 every -- with the lack of any proper objection we had every  
10 ability to go after that and not the least of which was the  
11 provisions of SDCL 15-6-45(b). So there was no willful abuse of  
12 the discovery rules on our part with respect to these subpoenas.  
13 They got notice, they made an objection, they didn't timely --  
14 or didn't arrange for a hearing for the objection, matter of  
15 fact they didn't arrange for a hearing until the next month,  
16 until now actually, that's when the notice came out, and so that  
17 is not bad faith I don't believe on our part, and there should  
18 be no ruling against the attorneys here for sanctions, we didn't  
19 do anything wrong, and I believe that we acted properly. So  
20 unless the Court has some specific questions that's all I have  
21 for now.

22 THE COURT: Well Mr. Portland, what if you wanted my  
23 medical records and you proceeded in the way that you did and  
24 got my medical records? Why is that okay? Why are you able to  
25 just say well nobody objected so I just assumed it was all right

1 for me to have these records?

2 MR. SORTLAND: Well, it's hard to take it out of  
3 context. If you were incapacitated and your testimony was  
4 however relevant or your medical condition was relevant to the  
5 situation, and say you were incapacitated so there's no other  
6 source for us to get that information those would go through.  
7 You might be able to get an attorney to object but I think under  
8 that condition if those medical records were necessary the Court  
9 would allow that as a matter of course. There might be some  
10 protective order placed on it but I mean --

11 THE COURT: Do you think that the information you  
12 sought was time sensitive in terms of Delores's medical state at  
13 the time of the alleged transactions?

14 MR. SORTLAND: We could have waited a month or two I  
15 suppose.

16 THE COURT: Absolutely. And why didn't you?

17 MR. SORTLAND: We've been stymying all along in  
18 getting information in this case. We did not want to get this  
19 dragged out for another 6 months. We obtained the medical  
20 records from the hospital, I assumed that they followed HIPAA  
21 rules and contacted Delores Gibson. There really was no reason  
22 to hold up.

23 THE COURT: Mr. Sortland, I have to say that your  
24 response to the motion to dismiss moves the needle closer to  
25 dismissal than further away from it. Your cavalier disregard of

1 the procedures that happened on a repeated basis concerns this  
2 Court to no end.

3 MR. SORCLAND: Well --

4 THE COURT: Go ahead.

5 MR. SORCLAND: Yeah, if I could talk to that. I  
6 discussed the first response because in Minnesota you do have to  
7 give notice to opposing counsel. I was advised in South Dakota  
8 you didn't. Well, I'm not a South Dakota attorney, I'll believe  
9 what the South Dakota counsel tells me. The only other -- our  
10 those depositions got taken care of, no problem. The second set  
11 of subpoenas went out and everybody got notice and there was one  
12 problem with that and that was the specific language that's  
13 added into the rules by the South Dakota rules was not put into  
14 those subpoenas. Regardless, we got what we wanted. Since then  
15 we've got the notices in, we've got the right language utilized  
16 in these documents, and so I don't think that there's any reason  
17 to sanction us or sanction my client because of those  
18 procedures.

19 THE COURT: But Mr. Sartland, if I think your behavior  
20 merits a sanction and you say to me I didn't do anything wrong,  
21 what choice do I have but to dismiss this case? What choice do  
22 I have but to dismiss this case so that I know that you aren't  
23 engaging in this kind of behavior again where you're just  
24 circumventing the Court's authority and you're just saying well,  
25 I'm pretty sure the Court would have ruled in my favor and I

1 I assumed everybody did their job right so I just got the  
2 information. If you did nothing wrong what assurance do I have  
3 that you don't just continue to engage in this kind of behavior  
4 again and again? Short of dismissing this suit?

5 MR. GORTLAND: Well, I mean I don't think we did  
6 anything wrong with those prior subpoenas.

7 THE COURT: So you're doing it again. If you had it  
8 to do over again you'd do it the exact same way. Is that what  
9 you're telling me Mr. Gortland?

10 MR. GORTLAND: No, we learned both times those  
11 objections were raised about the language and about the notice,  
12 we changed it and got them out. We had, you know, counsel can  
13 work things out. I mean there's a lot of people that don't  
14 follow the rules with respect to subpoenas, I think the Court  
15 knows that. We tried our best to follow them as we -- as we  
16 read the rules and so I apologize if anything wrong happened  
17 there, but the -- we don't -- there is, I mean we did try here,  
18 your Honor, and with respect to this subpoena, with respect to  
19 the objection of Mr. Ed Evans that came on November 16, he never  
20 scheduled any motion. What are we supposed to do? Call him up  
21 and say Ed, I know we need this stuff and I know you don't want  
22 us to have this stuff but you didn't object on a timely basis,  
23 we're going to go get it. And you didn't do anything to tell  
24 the hospital not to give us those records. Are we supposed to  
25 just lay ourselves open to objections from opposing counsel even

1 though we don't think it's warranted? Even though we don't  
2 believe you have any standing to raise those objection? I don't  
3 think that would be a proper advocate on behalf of my client.

4 THE COURT: You don't think it would have been worth  
5 the professional courtesy to say I know these records have been  
6 objected to, the hospital is calling me and trying to send me  
7 these records, what are we going to do about that? Do we need  
8 to get a hearing? What do we need to do? You couldn't have  
9 done that?

10 MR. SORTLAND: I think that would be contrary to the  
11 interests of my client to see those records and get them to our  
12 expert witness as quickly as possible. If I had to do it again  
13 I probably would. I'd want to avoid a hearing like this.

14 THE COURT: Unfortunately Mr. Sortland, I don't think  
15 you would. When I listen to you I hear you say I didn't do a  
16 darn thing wrong and I don't need to employ any level of  
17 professional courtesy, I don't need to employ any level of  
18 personal decency, I have to advocate for my client and that's  
19 the only thing I care about. That attitude concerns me.

20 MR. SORTLAND: I apologize, Your Honor, I do realize  
21 that things could have been done better here.

22 THE COURT: Yeah, but you only realized that when you  
23 just yelled at in a courtroom. You never once in your  
24 submissions to the Court before this hearing acknowledged that  
25 what you did was inappropriate and incorrect and how do I no-

1 believe Mr. Read when he says you know this issue because you  
2 brought it up in a Minnesota court, you know notice is necessary  
3 and you know that the sanction for disregarding the objections  
4 of other counsel and just leaving them out of the process can be  
5 dismissal of the suit?

6 MR. SORTLAND: Well, I'm pretty sure I lost that  
7 motion.

8 THE COURT: You did.

9 MR. SORTLAND: Yeah, so,

10 THE COURT: So is that the lesson you learned? I  
11 guess I can do it too? I'm astonished.

12 MR. SORTLAND: All I can say, I apologize, I would  
13 expect my opposing counsel to watch out for his part in  
14 participating in those rules and watching the requirements of  
15 having a hearing scheduled, but I do apologize. I think it  
16 would be very harmful to my client to have this case dismissed,  
17 it would be very harmful for him to try to find another counsel,  
18 that's why he's got me, I'm out of state counsel, but I think he  
19 has -- I think my client has a very good case and I think the  
20 Court could issue protective orders regarding the use of this  
21 information, I think that would be appropriate. I would like to  
22 be able to use everything at trial but if the Court thinks some  
23 retractions are necessary we can accomplish that.

24 THE COURT: All right. Mr. Sortland, I'm going to say  
25 this, I understand that litigation is often looked at by the

1 parties as something personal and as something spiteful and as  
2 something where they want to harass and intimidate and get things  
3 that they aren't supposed to have. I expect that the attorneys  
4 are the gatekeeper to make sure that that party's will isn't  
5 taken on by the attorneys. I think you've lost the forest for  
6 the trees here and while I hear what you're saying that you  
7 think you've got a great case, I look at this case as you  
8 blatantly and in bad faith disregarded the rules that are in  
9 place and the statutes that are in place to protect privileged  
10 and private medical records and that after you did so you did  
11 take a no harm no foul approach to it. Doesn't matter that they  
12 objected, I just assumed everything was okay and I got these  
13 records anyway. I'm just astonished at your response and as I  
14 say when I listen to your response and I listen to the abuse of  
15 discovery that has occurred here I can't think of any way to be  
16 assured that you aren't going to engage in this kind of conduct  
17 again other than to dismiss this case because you have no  
18 remorse for what you did, the fact that you apologized to me  
19 here in open court means nothing to me. You would do this again  
20 in a heartbeat. Your manner here in the courtroom, the words  
21 that you used in your submissions all lead me to believe that if  
22 you are given the opportunity to abuse the rules again you will  
23 and you will say that it is just because you want to advocate  
24 for your client and you lost sight of everything else. I took  
25 this matter first because honestly this is the decisive matter

1 for me when I read about these abuses in the submissions and  
2 when I hear the response here in the courtroom, I think the  
3 appropriate sanction is to dismiss this case. I am very loathed  
4 to dismiss actions and to strip parties of their right to have  
5 things litigated because of errors by their counsel, but when I  
6 weigh that risk against the idea that there have already been  
7 previous litigations with this family and with these exact same  
8 people, I have less of a concern that I am stripping Michael  
9 Gibson of some inherent right that he has to move this case  
10 forward. So when I balance those things and when I hear what I  
11 hear in the courtroom I think the appropriate sanction is for me  
12 to dismiss this case. Based upon that order and based upon that  
13 rule which I assume will be appealed, we'll let the Supreme  
14 Court weigh in on this, but I think that meets the other motions  
15 that are here and that's going to conclude the hearing.

16 (Proceeding concluded.)

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1 IN CIRCUIT COURT )

2 ) SS CERTIFICATE

3 COUNTY OF CODINGTON )

4

5 This is to certify that I, Dawn Russell, Court Reporter in  
6 the above-named County and State, took the foregoing  
7 proceedings, and the foregoing page 1-29, inclusive, are a true  
8 and correct transcript of my stenotype notes.

9 Dated at Watertown, South Dakota, this 10th day of April,  
10 2025.

11

12 /s/ Dawn Russell

13 Dawn Russell, Court Reporter

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1 STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
 2 )  
 3 COUNTY OF CODINGTON ) THIRD JUDICIAL CIRCUIT  
 4

5 Michael Gibson, )  
 6 Plaintiff, ) Motion Hearing  
 7 vs. ) 14Civ. 23-0350  
 8 Greg Gibson, individually, )  
 9 Joan Gibson, individually, )  
 10 and Gibson Family Limited )  
 11 Partnership, a South Dakota )  
 12 Limited Partnership, Robert )  
 13 Ronayne, and Ronayne Law )  
 14 Office, P.C. )  
 15 Defendants. )  
 16

17  
 18 BEFORE: THE HONORABLE CHAMON MEANS  
 19 Circuit Court Judge  
 20 Watertown, South Dakota  
 21 April 15, 2025

22 APPEARANCES:

23 For the Plaintiff: Mr. Mack Weiter  
 24 Alvine Law Firm  
 25 Sioux Falls, SD

26 For the Defendant Mr. Ed Evans  
 27 Gibson Family Evans, Haigh, & Acordt  
 28 Limited Sioux Falls, SD  
 29 Partnership:

30 For the Defendant Mr. Sander Morehead  
 31 Greg and Joan Morehead, Muller, Shultz & Smith  
 32 Gibson: Sioux Falls, SD

1 For the Defendant  
2 Robert Ronayne: Mr. Zachary Peterson  
Richardson Law Firm  
3 Aberdeen, SD

4 For the Defendant  
5 Schwan Financial: Mr. Joe Erickson  
Schoenbeck & Erickson  
6 Watertown, SD

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1 THE COURT: We are here today on plaintiff's motion to  
2 reconsider sanctions that were imposed by this Court pursuant to  
3 civil procedure in the matter of Michael Gibson Versus Greg  
4 Gibson individually, Joan Gibson individually, and Gibson Family  
5 Limited Partnership, Robert Ronayne and Ronayne Law Office. So  
6 I will have attorneys note their appearances in this matter for  
7 the record.

8 MR. WELTER: Your Honor, Mark Welter of Alpine Law  
9 Firm for Michael Gibson.

10 MR. EVANS: Ed Evans for Gibson Family Limited  
11 Partnership.

12 MR. MOREHEAD: Sander Morehead for Greg and Joan  
13 Gibson.

14 MR. PETERSON: Zachary Peterson for Robert Ronayne and  
15 Ronayne Law Office, P.C.

16 MR. ERICKSON: Joe Erickson on behalf of Schwan  
17 Financial.

18 THE COURT: All right. Mr. Welter, this is your  
19 motion to reconsider, I'll hear from you first.

20 MR. WELTER: Thank you, your Honor. First of all,  
21 your Honor, I'd like the Court to know that my client  
22 Mr. Gibson, he has been humbled by the dismissal of this case  
23 with prejudice, and we apologize to the Court if counsel  
24 Mr. Sortland fell short, you know, in the Court's eyes regarding  
25 the manner of his advocacy or any portions concerning

1 professional courtesy or attitude and we just wanted to state  
2 that up front on the record. The Court's well aware of the  
3 issues that were joined by the pleadings in this case, you know,  
4 including the allegations relating to the cause of action of  
5 breach of fiduciary duty and undue influence cause of action and  
6 what we do know is my brother here Mr. Evans and his firm have  
7 at all times represented Delores Gibson for years and the  
8 partnership in this case in years of litigation and I understand  
9 maybe even Prairie Lakes Health System in some unrelated civil  
10 litigation that might have been in front of this Court. The  
11 defendant Gibson and the partnership has known for years and  
12 have admitted in this case that I'm not going to go into great  
13 detail but Delores Gibson's physical and mental and cognitive  
14 maladies and vulnerabilities and that she doesn't have the  
15 capacity to even provide competent testimony apparently thereby  
16 essentially rendering her a general partner unavailable as a  
17 material witness in the case. So in an effort to quash the  
18 plaintiff's subpoena of the general partner Delores to give a  
19 deposition, counsel Evans and I presumably on behalf of Delores  
20 Gibson or the partnership, secured these written medical opinion  
21 letters supporting the incompetence, incapacity of Delores  
22 Gibson to testify and counsel served, filed and published these  
23 medical opinion letters and made them a part of the record in  
24 this case. One wonders how could these medical opinion letters  
25 be made part of the record without Delores Gibson's express

1 authorization that these practitioners provide these medical  
2 opinion letters to Mr. Evans to be made part of the record. So,  
3 you know, a question is whether or not there's been a waiver of  
4 any claimed evidentiary privilege as to the healthcare  
5 information contained in these opinion letters and also  
6 acknowledging that Delores Gibson's physical or mental cognitive  
7 conditions are directly an issue in this case, considering that  
8 an essential element of the undue influence count includes  
9 susceptibility to undue influence, it seems clear that her  
10 healthcare records for some years prior to and leading up to the  
11 disputed real estate transactions in question are all germane,  
12 material, relevant to the issues joined by the pleadings in this  
13 case and are discoverable, so as Delores for among other reasons  
14 including compassionate reasons was not made a party or an  
15 interested party to this lawsuit. The question is how to obtain  
16 the healthcare records of such a nonparty who also is a general  
17 partner in the family partnership where the limited partners  
18 dealings with the limited partner is the subject matter of the  
19 case, the two counts that I mentioned, the undue influence and  
20 the breach of fiduciary duty. Interrogatories are for parties,  
21 to serve on other parties according to Rule 33 and request for  
22 production are for parties to serve on other parties on Rule 34.  
23 A deposition of Delores Gibson was not legally cognizable as  
24 defendant, two medical practitioners agreed for physical or  
25 mental or emotional or cognitive reasons she wasn't medically

1 fit to give a deposition and thereby making her unavailable as a  
2 material witness in the case. My understanding is counsel and  
3 his firm rejected the plaintiff's request that Delores give a  
4 signed medical authorization to obtain her healthcare records  
5 relating to any physical, mental, emotional, or cognitive  
6 reason, one that she's unavailable as a witness, two that maybe  
7 probative of her mental condition as early as 2013 through the  
8 present, you know, her cognitive disabilities and susceptibility  
9 to undue influence. Deposing the medical practitioners of  
10 Delores who gave written opinion letters proved less than  
11 fruitful as the partnership and/or Delores did not authorize  
12 these two practitioners to testify beyond the four corners of  
13 the question letters that she apparently had authorized them to  
14 provide and make a part of the record, so the only vehicle  
15 allowed under the rules was a third party subpoena duces tecum  
16 of the health records of Delores Gibson and Rule 45 requires  
17 that before the subpoena of healthcare records is served on a  
18 person to whom is directed a notice and a copy of the subpoena  
19 must be served on each party to the pending matter and no  
20 genuine issue exists in this case that on November 16 plaintiff  
21 through his attorney did in fact through Odyssey submit to the  
22 clerk for filing and did in fact serve on each party to the  
23 matter pending notice that a subpoena duces tecum was filed and  
24 issued and two, notice to each party to the matter pending that  
25 the subpoena has been served with a copy of the subpoena duces

1 subpoena. So not only filed with the Court but served on all the  
2 attorneys for the parties in the case, it identified the caption  
3 of the case, the Circuit Court, the name of the medical provider  
4 subpoenaed, the details of exactly what health records,  
5 documents, information was being sought, and the stated deadline  
6 for the provider to produce those records. This is all that  
7 Rule 45(b) requires and we have to keep in mind that counsel  
8 Evans and his firm represented the partnership, provided long  
9 standing representation to Delores Gibson in litigation matters  
10 and have also represented Prairie Lakes in unrelated civil  
11 matter, and Mr. Evans' firm and the partnership did in fact  
12 receive by proper service, a copy of the subpoena duces tecum to  
13 be served in the case and had notice it had been issued and  
14 filed. So no genuine issue exists that Mr. Evans and his firm  
15 on November 18 before the subpoena duces tecum was in fact  
16 served on Prairie Lakes served and filed a motion to quash in  
17 order for protective order regarding the subpoena duces tecum  
18 that was issued and filed. They cite a Spencer case at length  
19 in their briefs involving no prior notice, and for those reasons  
20 that case isn't applicable here. So we've already discussed,  
21 you know, how it was filed and served through Odyssey thereby  
22 notifying all parties to the action of the information sought  
23 from this nonparty Prairie Lakes, so -- and no genuine issue  
24 existed, all parties, including the partnership, had actual  
25 notice and in fact immediately any objections they may have to

1 the subpoena and did a motion to quash and for protective order.  
2 So we cite the Kremen case district, northern district  
3 California West Law 9734729 that because the partnership  
4 received notice in time to file its objections, enter a motion  
5 for protection order or a motion to quash, it did receive prior  
6 notice and rule 45 is satisfied. I also note on the case of  
7 Ginley, 3-1-N-5-B-Y, 2005 West Law 27534 District Court, Eastern  
8 District of Pennsylvania similar case where the plaintiff move  
9 for sanctions for failure to comply with Rule 45 and the  
10 question was what constitutes prior notice under Rule 45? There  
11 the Court held that, you know, the question constitutes prior  
12 notice under Rule 45 is not as settled as either party would  
13 have us believe. The definition of quote prior notice unquote  
14 remains surprisingly elusive and as such hardly provides the  
15 grounds for sanctions against either party based on clear  
16 language of the rule and decision of law. The courts have made  
17 clear there's no prejudice where notice was actually served and  
18 the party had the opportunity to object. So because the  
19 plaintiffs actually received service of the notice and had  
20 adequate opportunity to respond they were not prejudiced and are  
21 not entitled to sanctions. Sanctions against the defendant are  
22 inappropriate in light of the lack of clarity as to the  
23 definition of prior notice and the lack of any prejudice to the  
24 party as a result of any violations that may have occurred. So  
25 Mr. Evans is attorney for and on behalf of the partnership

1 served and filed a motion to quash and order for protective  
2 order and as such because it was filed on behalf of the  
3 partnership an issue arises, does the partnership even have  
4 standing to seek to quash a subpoena duces tecum issued to  
5 Prairie Lakes as the partnership but does not have and has not  
6 asserted some personal right or privilege with regard to the  
7 records sought from Prairie Lakes concerning Delores Gibson's  
8 state of physical and or psychological susceptibility to any  
9 undue influence. I cite the Kauffman, K-A-U-F-F-A-N case,  
10 West Law 1051016 District Court Northern District of Ohio 2014  
11 and Charles Alan Wright and Miller, Federal Practice and  
12 Procedure Section 2459 that ordinarily a party has no standing  
13 to seek to quash a subpoena issued to someone who is not a party  
14 to the action unless the party claims some personal right or  
15 privilege with regard to the documents sought. So we know the  
16 party who brings a motion is the moving party and other than a  
17 motion to quash a subpoena the moving party bears the burden of  
18 proof and persuasion and I cite the Virginia Department of  
19 Corrections case 921 Fed Third 180, Fourth Circuit, U.S. Supreme  
20 Court, it's the duty of the movant when a motion is filed to  
21 pursue that motion to a hearing and a decision by the Court.  
22 Failure to do so may constitute a procedural bar, a waiver of  
23 the same, and or abandonment of that motion, however said motion  
24 may be heard later in the discretion of the Court. There's  
25 other cases I can provide the Court to support that. So we've

1 come to understand that Mr. Evans and his firm did not reach out  
2 to Prairie Lakes on behalf of the partnership or Delores Gibson  
3 and notify Prairie Lakes that the partnership had made a motion  
4 to quash and for protective order and that Delores Gibson does  
5 not consent to the Prairie Lakes producing the subpoenaed health  
6 records and inviting Prairie Lakes to join in the motion to  
7 quash and for protective order served and filed in the case. No  
8 genuine issue exists, Mr. Evans did not contact the Court to  
9 apprise the Court of the filed served motion by the partnership  
10 and request a timely hearing on the motion to quash or for  
11 protective order. Rule 45(b) states that the Court upon motion  
12 made promptly and in any event at or before the time specified  
13 in the subpoena for compliance therewith may quash, may quash,  
14 or modify the subpoena duces tecum if it is unreasonable and  
15 oppressive. No genuine issue exists that the hearing was never  
16 scheduled with the court administrator and no notice of hearing  
17 was filed or served, no genuine issue exists that Mr. Evans  
18 never emailed the judge and counsel and requested that the  
19 Court, you know, provisionally and or in the interim enter a  
20 limiting or protective order pending a scheduled hearing and  
21 decision on the motion. No genuine issue exists that Mr. Evans  
22 never reached out to an attorney for the plaintiff to see if  
23 plaintiff would agree to a provisional or interim stipulation  
24 for protective order until the matter could be brought before  
25 the Court by a scheduled hearing. The parties could have

1 stipulated and if they got the Court involved the Court could  
2 have, you know, entered an order that, you know, complies with  
3 the subpoena and production be stayed pending a hearing or  
4 pending further notice, maybe Delores Gibson or her  
5 representative or Prairie Lakes for time to intervene at a  
6 scheduled hearing. Another one that the records in question be  
7 produced by Prairie Lakes in a sealed envelope, as such produced  
8 sealed documents not be opened absent a court order or only in  
9 the presence of the Court like the Court doing an in camera  
10 inspection. Also could have been the plaintiff's attorney may  
11 receive production under maybe a risk of contempt of court that  
12 the parties and their attorneys are prohibited from sharing the  
13 documents with anyone including their own clients and are using  
14 the documents in this case without prior permission or order of  
15 the Court and that the documents be destroyed or returned to  
16 Prairie Lakes at the end of the case. That is often done in my  
17 experience in civil matters where we try to get law enforcement  
18 records, but you know, none of these things happened. There's  
19 nothing in the South Dakota Rules of Civil Procedure or clearly  
20 established case law in South Dakota or otherwise or South  
21 Dakota statute that mandates that when a party serves or files  
22 an objection to or a motion to quash or for protective order  
23 regarding documents or healthcare records that that  
24 automatically stays the discovery and production by a third  
25 party subpoenaed and that the subpoenaing requesting party must

1 immediately notify the party on whom the subpoena was issued of  
2 the stay and prior to the designated time for production. They  
3 cite this Keplinger case and that case is not applicable as that  
4 involved a state statute, their own version of a medical records  
5 act that required insistence and consent from the patient or the  
6 patient's representative. That is a waiver of privilege, and  
7 there the notice was served contemporaneously with the service  
8 of the subpoena. There the Court ruled that it interprets its  
9 West Virginia rules of civil procedure in light of the state  
10 medical records act to require prior notice to a party and  
11 patient and if a party objects in obtaining discovery of the  
12 information should cease until the discovery dispute is  
13 resolved, however unlike some jurisdictions that have past  
14 medical information privacy acts or a patient writes legislation  
15 that more broadly protect medical information, the South Dakota  
16 legislature has not done so and that is stated in the case of  
17 Wipf, 888 NW2d 790, South Dakota Supreme Court. So in my  
18 preparation for this hearing I did some more research and tried  
19 to get my head around this, I see that there are statutes under  
20 South Dakota, the rules of criminal procedure that the Court is  
21 probably way more familiar with than I am regarding subpoenaing  
22 witnesses and or documents. SDCL 23(a)-14-26 states that a  
23 motion relating to a subpoena may be made at any time prior to,  
24 during, or when appropriate subsequent to the appearance of any  
25 witness before he testifies, such motion shall be heard in

1 chambers and on the record. And 23(a)-14-27 further provides  
2 that if a notice is made pursuant to 26 before the day on which  
3 the person subpoenaed has been ordered to appear or books,  
4 records, or documents have been ordered to be produced the  
5 appearance of such person or the production of such documents  
6 shall upon appropriate order be stayed until the Court has ruled  
7 on such motion. So there in the criminal setting it provides,  
8 allows that production be stayed upon appropriate order of the  
9 Court. There is no such statute in the civil procedure. So  
10 those are just, you know, my best explanation of, you know, how  
11 we feel that Rule 15 and the notices were followed and there  
12 wasn't a violation of Rule 15 and the rules of civil procedure.  
13 The next thing is, you know, what do the HIPAA laws state? And  
14 those really apply to covered entities which in this case would  
15 be, you know, Prairie Lakes, not the plaintiff. The plaintiff  
16 did provide the partnership of which Delores Gibson is a partner  
17 notice of the subpoena duces tecum on Prairie Lakes and a  
18 detailed list of the records sought, at no time did the  
19 plaintiff or his counsel represent to or provide a written  
20 statement and accompanying documentation to Prairie Lakes, that  
21 the plaintiff gave or even attempted to give prior written  
22 notice to Delores personally, and we -- I looked up U.S.  
23 Department HHS.gov and it says the covered entity that is not a  
24 party to a litigation may disclose protected health information  
25 in response to a subpoena discovery request or other lawful

1 process if the covered entity receives certain satisfactory  
2 assurances from the party seeking the information, specifically  
3 the covered entity must receive a written statement and  
4 accompanying documentation that the requestor has made  
5 reasonable efforts either to insure that the individual who are  
6 the subject of the information have been given sufficient notice  
7 of the request or to secure the qualified protective order. So,  
8 you know, those duties are all on the covered entity and, you  
9 know, for notice to the individual that's required in it, you  
10 have the written statement and accompanying documentation must  
11 demonstrate notice including about the litigation to permit the  
12 individual to raise an objection with the Court, the time for  
13 the individual to raise the objection. So such statement and  
14 documentation may include for example a copy of the notice  
15 mailed to the individual that includes instructions for raising  
16 an objection with the Court and the deadline for doing so and a  
17 written statement or other documentation demonstrating that no  
18 objections were raised or all objections raised were received  
19 and the request is consistent with the resolution. To the  
20 extent the subpoena or other request itself demonstrates those  
21 above elements no additional documentation is required. In  
22 these things, the written statement, these are on the covered  
23 entity to satisfy itself, and at no time -- no genuine issue  
24 exists that Prairie Lakes never received and plaintiff's  
25 attorney never sent to Prairie Lakes any written statement and

1 accompanying documentation that the requestor made reasonable  
2 efforts to make sure that the individual or the subject of the  
3 information have been given sufficient notice of the request.  
4 No such statement, written or otherwise, was given to Prairie  
5 Lakes by or on behalf of the plaintiff. So it's not known if  
6 Prairie Lakes itself made reasonable efforts to notify Delores  
7 Gibson and/or the representative, her POA, her lawyer Mr. Evans,  
8 it's clear Prairie Lakes never sought a qualified protective  
9 order, the fact that Prairie Lakes produced the subpoenaed  
10 health records to the plaintiff's counsel implies or suggests  
11 that Prairie Lakes did notify Delores Gibson and/or her  
12 representative that it received the subpoena and obtained  
13 Delores Gibson's consent. That's one implication. Or that they  
14 made reasonable efforts to notify Delores Gibson who received  
15 the subpoena and asked if she consented or objected. That's  
16 another possibility or that Prairie Lakes just failed to comply  
17 with these requirements thereby opening itself to an enforcement  
18 action by the Department of Health and Human Services Office of  
19 Civil Rights for civil money penalties and on the covered  
20 entity, you know, the HIPAA applies to the covered entity. So  
21 no genuine issue of fact exists that the plaintiff and  
22 plaintiff's attorney did not violate HIPAA and no genuine issue  
23 of fact exists that the plaintiff and plaintiff's attorney did  
24 not violate any order of this Court or any clearly established  
25 local rule of this Circuit Court. As plaintiff's attorney

1 followed and did not violate the rules of civil procedure, South  
2 Dakota Codified Laws, or federal HIPAA regulations or local  
3 rules of the Court, it was lawful for plaintiff's attorney to  
4 voluntarily accept from Prairie Lakes by electronic means the  
5 documents requested in the subpoena duces tecum. Having  
6 properly received from Prairie Lakes its production by  
7 electronic means of the documents the plaintiff's attorney was  
8 legally entitled under Rule 15 to make a motion, seek leave of  
9 court to amend plaintiff's complaint, a second amendment, and  
10 attached to the motion to amend a proposed second amended  
11 complaint for purposes of among other things if one looks at the  
12 second amended complaint, new allegations that all the shares of  
13 the partnership owned by Mr. Gibson have been assigned to the  
14 Michael and Tara Gibson living trust. Two, adding assignees and  
15 successors including Michael and Tara Gibson living trust as a  
16 party plaintiff. Three, adding Champagne Ranch in 1996 &  
17 Ranch as parties defendant. And four, a varying additional  
18 discovered material facts common to and supporting all the  
19 causes of action showing entitlement to relief on the cause of  
20 action and breach of fiduciary duty and undue influence and  
21 those include Greg Gibson's self dealing, certain unsecured  
22 promissory notes that were not in the best interest of the  
23 partnership, facts regarding manipulated appraisals of real  
24 estate, facts regarding lease provisions at below market rate  
25 not in the best interest of and detrimental to the partnership,

1 facts regarding real estate transactions for woefully  
2 insufficient consideration, defendant's lack of transparency,  
3 lack of full disclosure, secretly taking over complete control  
4 management of the partnership, and defendant's knowledge at all  
5 times material before these suspect transactions of Dolores's  
6 medical conditions and how she was physically, mentally, and  
7 cognitively vulnerable and susceptible to undue influence by  
8 Greg and Joan Gibson, the Champagne Ranch, and the 1996 Y Ranch.  
9 So now the partnership speaks of publishing health records, but  
10 the law is clear that allegations in the complaint are not  
11 evidence and unverified allegations in the complaint are not  
12 facts and I looked at the second amended complaint and I really  
13 don't see much different from what was already brought out in  
14 the depositions of Joan Gibson, in the medical opinion letters  
15 that were elicited through Dolores Gibson by the doctors. So  
16 the defendant's motion to quash and for protective order  
17 regarding Prairie Lakes has yet to be heard and decided by the  
18 Court and the Court has not received and reviewed the medical  
19 records in question in camera to make a determination as to  
20 their relevance to the issues joined by the pleadings, the  
21 plaintiff's motion to amend the amended complaint is yet to be  
22 heard and decided by the Court, the plaintiff's -- no one is  
23 claiming that the second amended complaint allegations of undue  
24 influence could not withstand a motion for summary judgment, the  
25 Court has already denied defendant's motion to dismiss as to the

1 cause of action for breach of fiduciary duty, the Court is yet  
2 to hear and decide plaintiff's motion for disqualification of most  
3 of the \$10,000 plaintiff was forced to pay in advance of Schwan  
4 Financial and its lawyers to obtain production of relevant  
5 business financial records of records the partnership kept with  
6 Schwan which is their financial investment adviser and tax  
7 preparer. So the defendant's relying on rule 41(b) which allows  
8 for some sanctions quote for failure of the plaintiff to  
9 prosecute or to comply with this chapter or any order of the  
10 Court, of course here there's no failure to prosecute, plaintiff  
11 has been proceeding with reasonable promptitude, maybe  
12 overzealously in the opinion of some here bringing this matter  
13 forward. There was no failure to comply with any order of the  
14 Court, in fact there's nothing the plaintiff Michael Gibson did  
15 or failed to do that constitutes a failure by him to comply with  
16 the rules of civil procedure or any state or federal statute or  
17 any order of the Court or local rule of court. Courts must be  
18 mindful of the strong public policy that cases be decided on the  
19 merits and that dismissal without deciding the merits is a most  
20 extreme sanction and the Court has made clear already that it  
21 loathes the thought of imposing a punitive dismissal of a civil  
22 case, depriving the plaintiff of his constitutional right to a  
23 jury trial on all issues triable to a jury. So the Court must  
24 exercise its broad powers and there are broad powers, with  
25 restraint and only after considering all the facts before

1 imposing a punitive extreme sanction of dismissal of an action  
2 with prejudice and these factors could include a public policy  
3 favoring the disposition of cases on their merits, the degree of  
4 wrong doers culpability particularly finding bad faith or  
5 conduct that's tantamount to bad faith for example contumacious  
6 conduct or willful disobedience of an order of the Court.  
7 Another factor, the extent of the client's blame, the client,  
8 the plaintiff Mr. Gibson, if their wrongful conduct is committed  
9 by its attorney recognizing that courts seldom dismiss claims  
10 against blameless clients. Another factor whether the trial  
11 court put the delinquent parties on notice that further  
12 noncompliance would result in dismissal, the availability of  
13 less drastic sanctions to rectify the wrong by punishing  
14 culpable parties, compensating harmed parties, persons,  
15 deterring similar conduct in the future. Another factor,  
16 whether other sanctions have proved unavailing. Another factor  
17 substantial prejudice to a party, here the defendant, the  
18 partnership. Whether the Court has sufficient basis for  
19 concluding that other sanctions would not have been equally  
20 effective. The meritricousness of the plaintiff's claim or  
21 cause of action, and finally the public interest. Here public  
22 policy favors the disposition of the case on its merits, there's  
23 no evidence to support willful disobedience of plaintiff's  
24 counsel to an order of the Court, there's not evidence to  
25 support the plaintiff is blameworthy for the alleged wrongful

1 conduct committed by plaintiff's attorney, neither plaintiff nor  
2 plaintiff's attorney was put on notice by the Court that further  
3 noncompliance and or disobedience would result in dismissal of  
4 the case. The Court didn't have the opportunity to consider the  
5 availability of less drastic sanctions, one would be notice of  
6 dereliction, disobedience of misconduct and awarding of  
7 dismissal if it should happen again, an order that notice be  
8 given to Delores, a time period for her to object or seek a  
9 protective order, maybe review of the medical records in camera  
10 in fashioning a protective order like quashing or redacting or  
11 sealing or otherwise limiting its use, and assessing costs,  
12 attorney fees, and or fines. You know, we would respectfully  
13 submit the Court didn't have sufficient basis for concluding  
14 other sanctions would not have been equally effective. The  
15 plaintiff's complaint, cause of action including undue  
16 influence, and breach of fiduciary duty have legal merit and  
17 would withstand a motion to dismiss or a motion for summary  
18 judgment. I do note, your Honor, that on the heels of the  
19 dismissal of this case with prejudice the parties received a  
20 letter from attorney Evans dated April 3 basically placing  
21 everyone on notice that the partnership of Greg Gibson is going  
22 to seek to place the two remaining parcels of land, the Tolks  
23 pasture and home place up for auction. With Delores having  
24 dementia it's unclear who's running the partnership and who  
25 hatched this idea of the no auction off partnership land,

1 selling as opposed to distributing will create a taxable event,  
2 an adverse taxable event. Also the feedlot is of no value to  
3 anyone but Greg Gibson as the only available water access is  
4 across the street and there's two years of feed stored on the  
5 facility. So if they put this up for auction, Greg if allowed  
6 to bid on this auction property will be the only bidder, he'll  
7 get it for half market value and create a taxable event for the  
8 other members of the partnership. Prior counsel for Michael  
9 Gibson had previously communicated to attorney Evans and Ronayne  
10 our absolute opposition to auctioning partnership land. Here  
11 they are again threatening to put the land up for objection  
12 while the case between the two parties is in this legal limbo.  
13 So for all those reasons, your Honor, we respectfully request  
14 that the Court order, the Court's order and judgment entered and  
15 filed on March 26 be altered, amended, and or vacated and the  
16 Court enter an order denying defendant's motion to dismiss and  
17 that the Court allow the case to proceed including hearing on  
18 among other things the various defendant's motions to quash and  
19 for protective order, the plaintiff's motion to amend the  
20 complaint, and the plaintiff's motion regarding discouragement.  
21 And I have nothing further, your Honor.

22 THE COURT: Mr. Welter, I'm going to ask you some  
23 questions about your argument. So do you -- would you agree  
24 with the Court that the behavior of counsel at a motion hearing  
25 on a motion for sanctions is something that the Court can take

1 into consideration when deciding the appropriate sanction?

2 MR. WELTER: I would agree that the Court can, you  
3 know, because of its inherent power has a right to consider  
4 anything it deems material and relevant.

5 THE COURT: All right. And so it feels to me like  
6 you're without the same hubris that Mr. Scotland showed at the  
7 hearing on the motion for sanctions, that you in a more I guess  
8 humble way are essentially saying a lot of the same things he  
9 did, that is there wasn't any mistake made and this is everybody  
10 else's fault and defense counsel should have done things  
11 differently and the hospital should have done things differently  
12 and I didn't do anything wrong and I was entitled to these  
13 records.

14 MR. WELTER: Quite the contrary, your Honor, number 1  
15 I'm advocating for my client Michael Gibson and would I if I was  
16 the attorney involved done things differently? Perhaps. I  
17 wouldn't want to upset, you know, the Court or the parties,  
18 would definitely have done things differently. And we stand  
19 ready, willing, and able if the Court wants to enter some sort  
20 of order of protection or limit regarding these issues, we're  
21 going to obey the Court. We are going to obey the Court. We  
22 don't want to be here on this again.

23 THE COURT: The next question that I want to ask you  
24 is you make the argument in your submissions that even though  
25 prior counsel may have been inappropriate, that in actuality

1 Michael Gibson has done nothing wrong and so he shouldn't suffer  
2 any sanctions and I'm trying to understand, because when this  
3 case appeared before me and when I heard this case on the motion  
4 for sanctions I was struck in the pleadings, even though I  
5 didn't make a finding about this, I was struck in the pleadings  
6 by Mr. Scotland's very odd world view that if you aren't with  
7 Michael Gibson you must be with Greg Gibson or against Michael  
8 Gibson and I saw that even in the filings and the submissions  
9 that were related to Schwan Financial where somehow because  
10 Schwan Financial was not throwing records at your client that  
11 somehow they had to be in cahoots with Greg Gibson and somehow  
12 they had to be behaving inappropriately themselves or that they  
13 were part of some weird world view where everybody's against  
14 Michael. Now, I don't know where Mr. Scotland would get the  
15 basis to make a submission like that, but the only basis I can  
16 think of unless Mr. Scotland suffers from some sort of mental  
17 illness, is that he gets that from his client and so that is why  
18 I made the findings that I did because I was concerned that I  
19 don't think it's Mr. Scotland -- Mr. Scotland's behavior from  
20 the Court's perspective was most certainly reprehensible, and  
21 then any lip service he paid to owning up to any mistakes was in  
22 fact lip service trying to appease the Court when it was clear  
23 that the Court was angry at his cavalier attitude about what had  
24 been done and the mistakes that had been made.

25 Mr. WELTEK: And the beginning of this, my client did

1 personally apologize to the Court for any --

2 THE COURT: Sure.

3 MR. WELTER: For Mr. Sortland falling short in the  
4 Court's eyes regarding his manner of advocacy, his attitude,  
5 his, you know, oddness.

6 THE COURT: Right, but I think my question is, I mean  
7 I understand what you're saying, but I think what my question is  
8 is that Mr. Sortland didn't get this world view organically, he  
9 got it from his "client", and as I said in the motion hearing  
10 where I entered the order to dismiss, I said that lawyers need  
11 to stand as a gatekeeper against overzealous clients and I can't  
12 find any other basis for why Mr. Sortland would have this world  
13 view than he got it from his client and he was not being that  
14 gatekeeper and so he was doing what his client wanted without  
15 saying to himself or to anyone else maybe I should take a breath  
16 here and maybe I shouldn't just ignore the idea that the Court  
17 needs to act on a motion to quash. To me, all of that had to  
18 come from Michael Gibson unless you have some other basis for  
19 why you think Mr. Sortland was behaving the way he was.

20 MR. WELTER: I don't think that came from the client,  
21 I mean I think the attorney, and I don't know Mr. Sortland that  
22 well that I can read his mind, but you know, this is civil  
23 litigation, there's a reason, we should all be civil in  
24 litigating. These are matters, strategy matters are really for  
25 the attorney not the client and, you know, Mr. Gibson didn't

1 write the brief and didn't come argue this and there's some  
2 people, some lawyers I guess who take this advocacy for their  
3 client and winning maybe overzealously and, you know, it affects  
4 their proverbial bedside manner and can tick off, you know, the  
5 parties and the Court, but I don't attribute that to my client  
6 Mr. Gibson.

7 THE COURT: Well, Mr. Walter, I, you know, I want to  
8 hold a world view where civil cases mean that people behave  
9 civilly, but I have seen some of the worst sides of people's  
10 personalities come out in civil litigation and so I don't know  
11 that I'm wrong to say that Michael Gibson wasn't behind at least  
12 in some level the behavior of his attorney, but those are the  
13 questions that I have for you. Mr. Evans, I'm going to hear  
14 from you regarding this issue.

15 MR. EVANS: Just to follow up real quickly on the last  
16 where you left off with him, if you read the affidavits of  
17 Michael Gibson that are a part of this record you will come to  
18 the conclusion, the irrefutable conclusion, that you're either  
19 for him and if you're not for him then you're against him  
20 whether you're Schwan, whether you're an insurance agent,  
21 whatever you are you either see in his way or you're against him  
22 and treating him unfairly and there's no doubt when you look at  
23 those affidavits where Mr. Sortland came up with his  
24 presentation. May it please the Court, I'm not going to spend  
25 much time addressing the issues in this case, the issues have

1 been briefed, they were argued before on our motion to dismiss  
2 for willful and intentional violation of the discovery rules.  
3 decided by you, but I want to address a couple of points. First  
4 the plaintiff's question whether a motion for reconsideration is  
5 governed by Rule 60(b). They don't really address that today  
6 here, significantly plaintiffs have never told you what the  
7 standard of review should be for a motion for reconsideration.  
8 They didn't tell you in their brief and they didn't tell you  
9 today. A judgment has been entered in this case. I don't know  
10 what other rule would apply other than the rule that talks about  
11 setting aside a judgment, but if that doesn't apply for some  
12 reason then which one does? I mean I've had trial courts in  
13 this state tell me there's no such thing as a motion to  
14 reconsider, this isn't baseball, you don't get 3 strikes. I  
15 mean if I lose here today can I make a motion next week and say  
16 let's go best out of three? Relief under Rule 60(b) or whatever  
17 you want to apply for a motion to reconsideration should only be  
18 granted under exceptional circumstances, otherwise everybody  
19 will be wanting another chance. The rule offers an  
20 extraordinary remedy to be used sparingly in the interest of  
21 finality, judgment should be final, and the conservation of  
22 judicial resources unless you want your work load to double of  
23 everybody presenting everything to you twice. Absent unusual  
24 circumstances unless the Court is presented with new evidence  
25 that couldn't have been presented before or there's a clear

1 error or intervening change in the law like a Supreme Court  
2 decision comes down after you rule, a Rule 60(b) motion should  
3 be denied. Here there's no exceptional circumstances that  
4 warrant relief, plaintiff doesn't rely on newly discovered  
5 evidence, doesn't contend the Court committed manifest error of  
6 law or fact, plaintiff attempts to rehash all the issues that  
7 were brought here before on March 11, 2025, all though as the  
8 Court says with a little different presentation, not such a  
9 lecturing tone. They say the Court should have less severe  
10 sanctions but they don't say what those are. You know,  
11 interestingly to this day they've never said judge, here are the  
12 records, we're tearing them up, we don't keep a copy. Let's get  
13 rid of them, let's never let them see the light of day until you  
14 rule. Have they ever said that? No. They continue to keep  
15 them when they know that's the sole issue before the Court. If  
16 they were serious about this they'd bring them in here, say we  
17 kept no copies, we're tearing them up, we're giving them to you  
18 for you to put through a shredder. They'd say well maybe we  
19 could enter into a protective order, and I'll address that in a  
20 few minutes. But in any event the plaintiff presents no  
21 authority that would prohibit this Court from dismissing a case  
22 as a sanction for severe egregious and willful violation of Rule  
23 11(b) which specifically says the Court can dismiss a case for  
24 plaintiff's failure to comply with the rules of procedure.  
25 Turning to the merits. Plaintiff boldly asserts that they quote

1 followed the law in seeking the medical records and quote marks,  
2 and quote the plaintiff and his counsel did everything  
3 correctly, end quote marks. They still don't get it, that they  
4 wrongfully obtained the records without Delores Gibson's  
5 consent. Moreover they issued this Court's authority in name in  
6 issuing the subpoena to wrongfully and illegally obtain the  
7 records. The subpoenas are issued in the name of the Honorable  
8 Carmen Means, and let's remember the chronology. May 2024, the  
9 subpoenas are issued, no notice to the parties. One subpoena is  
10 to Schwart Financial asking for Delores Gibson's personal records  
11 and medical information including her protected health  
12 information. We object, we file a motion for protective order.  
13 In response plaintiff no longer sought the records, agreed with  
14 us. We didn't need a hearing on our motion for protective  
15 order. They told Schwart that they no longer needed Delores  
16 Gibson's personal or financial information and it wasn't  
17 produced. Okay, so they know we were objecting to the personal  
18 financial information and the medical information. They agreed.  
19 We assumed the issue was resolved without needing a hearing.  
20 Next, September 2024 Mr. Sotl and sends out notice of  
21 depositions to take Delores Gibson's deposition. We file a  
22 motion to quash, a motion for protective order, supplied letters  
23 from her attending physicians stating her -- she's not in good  
24 health, this is in 2024. One could suggest that Michael Gibson  
25 waited to start this action until he did in 2022 until after her

1 mental health had deteriorated and then decided I'll start the  
2 lawsuit because she can't be a witness. In any event in  
3 September of 2024 we filed a motion to quash and a motion for  
4 protective order, supplied the letters and they dropped it,  
5 didn't want to depose her anymore. So again we filed the motion  
6 and the motion for protective order, we didn't need to waste the  
7 court's time for a hearing because they agreed and they say  
8 yeah, we drop our request to depose her. November, 2024 a  
9 subpoena was issued to Delores Gibson's psychologist  
10 Dr. Hendricks and her treating physician Dr. Riefferbenger, to  
11 depose them and to produce her records. Subpoenas were issued  
12 on November 15 on a Friday, the next business day, Monday  
13 November 16 we filed a motion to quash and for protective order  
14 to prevent discovery of her private and privileged medical  
15 records. On the next day, November 19 Dr. Hendricks sat for his  
16 deposition when plaintiff's counsel tried to get into Delores  
17 Gibson's medical history and medical condition beyond her  
18 current medical state, we objected, and we told them at that  
19 time we represented both Delores Gibson and Gibson Family  
20 Limited Partnership, and then I don't know, did you get the  
21 affidavit I filed this morning?

22 MR. WELTEK: I did. Thank you.

23 MR. EVANS: Did you get it, your Honor?

24 THE COURT: I did not.

25 MR. EVANS: Okay, this is important because it

1 supplements what I've already been talking about. So this is  
2 the day after Mr. Sotoland's deposition or on the same day, I'm  
3 sorry, on the same day of Mr. Sotoland's deposition, Exhibit 1,  
4 Paul Sotoland or this is Dr. Hendricks deposition on November  
5 19, after the deposition Mr. Sotoland says to hopefully resolve  
6 this issue of obtaining the medical records of Delores Gibson  
7 please tell me what sort of protective order would be required.  
8 Okay, this is after we filed a motion to quash, he's got it, and  
9 he's saying okay, what kind of protective order is going to be  
10 needed to allow us to see her records? I reply back and say  
11 I'll visit with LeAnn Swenson and Delores Gibson, and I'm not  
12 going to be able to meet with them until next week, do you want  
13 to postpone Dr. Rieffenberger's deposition until I propose  
14 something? Dr. Rieffenberger's deposition was scheduled the  
15 next day. He says yes, let's postpone her deposition. So now  
16 after we served the motion to quash he's trying to resolve it  
17 through some type of protective order. That's what he's telling  
18 us. What's he telling Prairie Lakes Hospital? He's telling  
19 them that all of the parties have access to the records because  
20 they're working together, and that Prairie Lakes Hospital relied  
21 upon Mr. Sotoland's comments that the requests were approved by  
22 the judicial process and the subpoenas state the documents  
23 should be treated as a court order and that the parties have no  
24 objection to the subpoenas and we're working together to obtain  
25 her records. That's what he tells Prairie Lakes Hospital, when

1 nothing could be further from the truth other than trying to  
2 mislead them. So in summary we object that the depositions  
3 seeking her personal medical and financial information in May of  
4 2024, we objected again in July of 2024 and November of 2024.  
5 In spite of all those objections plaintiff proceeded to obtain  
6 the records, it falsely represented to Prairie Lakes the parties  
7 were working together to obtain the records. That's a false  
8 statement using a subpoena of this Court to mislead the third  
9 party, the hospital. The fact that the insurance company hired  
10 us to represent the hospital the week before, the Court knows  
11 that that is just irrelevant, immaterial and strictly again  
12 totally inappropriate to raise that. When we aren't general  
13 counsel for the hospital, we don't advise them except when their  
14 insurance company hires us to defend them on a particular  
15 matter, and it's offensive to raise that argument here.  
16 Mr. Wulter admitted here this morning we refused to give them  
17 Dolores Gibson's records. Correct, and they knew that and knew  
18 it the whole time, but that's not what they told Prairie Lakes  
19 Hospital. So plaintiff obtains the medical records from Prairie  
20 Lakes without telling them about our objections and they waited  
21 until Prairie Lakes produced the records before telling anyone  
22 that they had been produced and then they incorporated in the  
23 Amended Complaint and filed it with the Court, knowing of our  
24 objections and having in their possession our motion to quash.  
25 Based upon the above sequence of events plaintiff states in

1 support of his motion to reconsider quote the plaintiff and his  
2 counsel did everything correctly. That's scary. They state  
3 that they assume the hospital followed HIPAA rules and contacted  
4 Delores Gibson and got her permission. Your Honor, again, to  
5 say that when they knew we objected, they want to propose some  
6 type of protective order that we cannot agree to when they knew  
7 that and now they're saying we thought that maybe the whole  
8 thing changed because the hospital contacted Delores Gibson.  
9 Just another false statement. They knew Delores Gibson,  
10 objected, he admitted it here this morning. As this Court noted  
11 at the hearing on March 11 that the Court believes plaintiff's  
12 counsel's behavior merits a sanction and that plaintiff's  
13 counsel claims he did nothing wrong, that leaves little choice  
14 but to dismiss the case and again things haven't changed too  
15 much in their reply brief, plaintiff states that the plaintiff  
16 and his counsel did everything correctly. In dismissing this  
17 case the Court specifically found on March 11 plaintiff's  
18 counsel acted quote blatantly and in bad faith, disregarded the  
19 rules that are in place to protect privileged and private  
20 medical records. In essence the Court saying they thought the  
21 ends justify the means. He wanted those records, he didn't want  
22 to go to a hearing and ask the Court for an in camera inspection  
23 or to ask for a protective order or any of that, he didn't want  
24 to risk doing that, he got the records, still hasn't destroyed  
25 them or given them back, so he chose the route to go. If that

1 creates issues between Michael Gibson and his lawyer, those are  
2 issues for them to resolve even though as I say if you look at  
3 the affidavits by Michael Gibson in this case you'll find out  
4 where Mr. Sortland's attitude came from and also Mr. Sortland  
5 hasn't withdrawn from this case, you know, if the Court grants  
6 this motion for some reason he'll come back from Minneapolis and  
7 take over. Given the Court's finding of blatant and bad faith  
8 disregard of the rules and the dishonesty and misrepresentations  
9 and false statements to the hospital, the Court's dismissal was  
10 appropriate and the Court should deny the motion to reconsider.  
11 Thank you.

12 THE COURT: Mr. Morehead, anything to add?

13 MR. MOREHEAD: Nothing further from Greg and Joan  
14 Gibson, your Honor.

15 THE COURT: Mr. Peterson, anything you want to add?

16 MR. PETERSON: No, your Honor, the Ronayne defendants  
17 would join the argument of Mr. Evans.

18 THE COURT: Mr. Erickson, you're kind of an aside  
19 issue to the motion to dismiss, is there any record you want to  
20 make?

21 MR. ERICKSON: No, your Honor, I think it's all  
22 covered here, I'd just be redundant.

23 THE COURT: All right.

24 MR. WELTER: May I respond, your Honor?

25 THE COURT: Go ahead.

1 MR. WELTERT: So their brief basically said the  
2 dismissed with prejudice was, you know, can't be undone is what  
3 they're claiming now and I would cite to the Court United States  
4 Supreme Court case of Kemp versus United States, 596 US 528,  
5 where the Court made clear that a court of general jurisdiction,  
6 which is this court, has the inherent power to vacate or modify  
7 its own judgment and this includes under Rule 60(b) for any  
8 judicial error of law or fact, a mistake, a misconception, a  
9 misunderstanding and or a failure in the opinion or judgment. And  
10 I would also note 9th Circuit *In re Couture*, 2023 West Law  
11 6058491, 9th Circuit 2023 that if we're talking about Rule  
12 60(b)(6), the catch all provision, an error of law is an  
13 extraordinary circumstance that supports the grant of a Rule  
14 60(b)(6) motion. Also I note in *Wagner*, South Dakota Supreme 391  
15 NW 2d 490 that the quote broad language of Rule 60(b)(6) gives  
16 the Court ample power to vacate judgments whenever such action  
17 is appropriate to accomplish justice and the courts have used  
18 this clause in a variety of situations. So of course the Court  
19 can alter or amend, vacate its order and judgment in this case.  
20 Counsel brought up a first set of subpoenas regarding financial  
21 records and objection and or motion was made and the plaintiff's  
22 counsel saw that they were correct, that perhaps those subpoenas  
23 duces tecum were fatally deficient or defective and they didn't  
24 go forward with it. The same came with a motion to quash, you  
25 know, the deposition of Delores. There was produced obviously

1 at the agreement or consent of Delores Gibson the opinion  
2 letters of her medical providers, why she is really unavailable  
3 material witness due to her medical and psychological issues,  
4 and, you know, the plaintiff through their attorney dropped  
5 going forward with that. The other thing they brought up -- oh,  
6 they brought up this affidavit email and none of that changes  
7 what I've told the Court today, this was a situation where  
8 Mr. Evans had objected, but he was the moving party, he had the  
9 burden of production and persuasion, it was incumbent upon him  
10 to bring the matter to a motion, he could have reached out to --  
11 could have got an interim order from the Court pending ruling on  
12 the motion, he could have reached out to attorney Sotland to  
13 maybe work out some sort of stipulation and agreement. He  
14 didn't do that. But what Mr. Sotland did was in fact reach out  
15 to Mr. Evans to see if he'd be willing to stipulate to some sort  
16 of protection pending a ruling by the Court and he never heard  
17 back from them. He was ghosted, no response, no counter  
18 proposal, nothing. So that affidavit that was filed this  
19 morning doesn't change a thing here. And then finally him  
20 claiming that Mr. Sotland made false representations to Prairie  
21 Lakes is absolutely unsupported by the evidence, Mr. Sotland  
22 was candid with the Court at the last hearing and made clear  
23 that the conversation when Prairie Lakes called was with his  
24 secretary, not him, his secretary's not authorized to give legal  
25 advice, she would never say that to the Prairie Lakes person and

1 so it's not creditable. And I have nothing further, your Honor.

2 THE COURT: The Court granted a hearing on a motion to  
3 reconsider because the Court had felt a large amount of anger at  
4 Mr. Sortland for his manner in conducting the hearing on March  
5 11, to his responses to the Court, to his cavalier attitude, and  
6 for the things that I added when I supplemented the record here  
7 today which is the idea that Mr. Sortland seems to blame  
8 everybody else in the world for conspiring with the defendant  
9 here Greg Gibson and not bringing forth Michael Gibson's reality  
10 of the way he thinks that it should be brought forth.

11 MR. WELTER: Your Honor, could I add?

12 THE COURT: No. No thank you. When the Court takes  
13 an extreme view of the behavior of counsel and as a result the  
14 behavior of the plaintiff the Court, at least this Court, wants  
15 to be sure that I haven't acted with emotion as opposed to with  
16 reason and so while I've been waiting for this hearing, as I've  
17 been anticipating this hearing, I thought about the findings  
18 that I made and I thought about the importance I think of  
19 attorneys not to lose the forest for the trees and I think  
20 that's what happened here and in doing so important privileged  
21 information was gained in a way that I continue to feel was  
22 dishonest and egregious and so I granted this motion to  
23 reconsider primarily because I didn't want my displeasure at  
24 Mr. Sortland to be unfairly reflected on his client, but I do  
25 think it is well worth noting what Mr. Evans said that it is not

1 that Mr. Sortland has a strange world view, the affidavits of  
2 the plaintiff in this matter are illustrative of where the  
3 source of that world view is. And so you have your remedy  
4 Mr. Welter, I made sure that this motion to reconsider hearing  
5 happened before the appeal deadline. If the Supreme Court thinks  
6 that I didn't make sufficient findings or that I was precipitous  
7 in granting a motion to dismiss I have no doubt that they will  
8 inform me of that and I will take up that issue if it should  
9 come to that, but I continue to feel as if the behavior here,  
10 particularly with regard to confidential medical records was  
11 repeated, it was dishonest, it was egregious, and then on top of  
12 all of that Mr. Sortland came to court and said it was everybody  
13 else's problem and everybody else's mistake and Mr. Welter,  
14 while I said you present a much more palatable version of that  
15 to me here today, essentially I feel like you're saying the same  
16 thing and so nothing really has changed since March 11 to  
17 today's date. And so I am not going to reconsider the decision  
18 that I made, I made it for what I feel are well founded reasons,  
19 I made it because of the things that I was in a unique position  
20 to see when I was here in the courtroom and as I was interacting  
21 with the attorneys, and so I'm not going to reconsider my  
22 decision, the judgment will stand as it is and you will have  
23 your right to appeal that decision. We're going to be in recess  
24 today.

25 (Proceeding concluded.)

1 IN CIRCUIT COURT )

2 ) SS CERTIFICATE

3 COUNTY OF CODINGTON )

4

5 This is to certify that I, Dawn Russell, Court Reporter in  
6 the above-named County and State, took the foregoing  
7 proceedings, and the foregoing page 1-38, inclusive, are a true  
8 and correct transcript of my stenotype notes.

9 Dated at Watertown, South Dakota, this 9th day of June,  
10 2025.

11

12 /s/ Dawn Russell

13 Dawn Russell, Court Reporter

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GFLP APP. 67

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

---

MICHAEL A. GIBSON

Appellant,

-vs-

GREG GIBSON, individually; JOAN GIBSON, individually; GIBSON  
FAMILY LIMITED PARTNERSHIP, a South Dakota Limited Partnership;  
ROBERT M. RONAYNE; and RONAYNE LAW OFFICE, P.C.,

Appellees.

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Appeal No. 31073

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APPEAL FROM THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT  
CODINGTON COUNTY, SOUTH DAKOTA

---

THE HONORABLE CARMEN A. MEANS,  
CIRCUIT COURT JUDGE

---

**BRIEF OF APPELLEES ROBERT M. RONAYNE  
and RONAYNE LAW OFFICE, P.C.**

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NOTICE OF APPEAL FILED  
APRIL 25, 2025

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## PRELIMINARY STATEMENT

In this brief, the Appellant, Michael Gibson, will be referred to as "Michael." Appellees Greg Gibson and Joan Gibson will be referred to as "Greg" and "Joan," respectively. Appellee Gibson Family Limited Partnership will be referred to as "GFLP." Appellees Robert Ronayne and Ronayne Law Office, P.C., will be collectively referred to as "Ronayne." The Codington County Clerk of Courts' record will be referred to by the initials "CR" and the corresponding page numbers.

## JURISDICTIONAL STATEMENT

Michael appeals the Order and Judgment entered and noticed on March 26, 2025, and the Order Denying Motion for Reconsideration entered April 17, 2025, and noticed on April 23, 2025. (CR 2427-2431, 2568-2571.) The Notice of Appeal was filed on April 25, 2025. (CR 2588.) Michael contends this Court may exercise jurisdiction pursuant to SDCL 15-26A-3(1), because the Circuit Court entered a judgment dismissing his case.

Ronayne disputes that the Court may review the taxation of costs against Michael pursuant to an Amended Notice of Appeal. See Picardi v. Zimmiond, 2005 S.D. 24, ¶ 18, 693 N.W.2d 656, 662 (quoting Strand v. Courier, 434 N.W.2d 60, 66 (S.D. 1988)) ("The non-prevailing party's interests are protected in that he or she may appeal the taxation as a separate final judgment as was done here, and the taxation is still subject to a review by this Court. When [the order for costs] is made subsequent to the entry of a

judgment the order may not be reviewed upon appeal from the judgment, but only by a direct appeal from the order.”).

Greg, Joan, and Ronayne preserved their rights to seek review of the Circuit Court’s Order Denying Motions to Dismiss by filing and serving Notices of Review. Ronayne’s Notice of Review was filed and served on May 13, 2025, and Greg and Joan’s Notice of Review was filed and served on May 14, 2025. Both are timely under SDCL 15-26A-22, as they were filed within 20 days after service of Michael’s Notice of Appeal.

#### **QUESTIONS PRESENTED**

**I. Whether dismissal of the case based upon numerous violations of the rules of civil procedure and discovery abuses was an appropriate exercise of the Circuit Court’s discretion.**

*The Circuit Court concluded that, given plaintiff’s counsel’s bad faith disregard of the rules that are in place to protect privileged and private medical records and the likelihood that he would continue to commit violations, the appropriate sanction was dismissal of the case. The Circuit Court denied plaintiff’s motion to reconsider.*

SDCL 15-6-41(b).

SDCL 15-26A-67.

**II. Whether Counts Two and Three of the Amended Complaint, which legally depend on a fiduciary duty between the GFLP’s limited partners, state a plausible claim for relief.**

*The Circuit Court concluded there were sufficient facts pled to survive a SDCL 15-6-12(b)(5) motion and denied the motions to dismiss filed by Greg and Ronayne based upon Greg’s lack of fiduciary duty to Michael.*

Gibson v. Gibson Family Ltd. P’ship, 2016 S.D. 26, 877 N.W.2d 597.

Cole v. Wellmark of South Dakota, Inc., 2009 S.D. 108, 776 N.W.2d 240.

Wallop Canyon Ranch Ltd. Liab. Co. v. Goodwyn, 351 P.3d 943 (Wyo. 2015).

Gantvoort v. Ranschau, 2022 S.D. 22, 973 N.W.2d 225.

SDCL 48-7-403.

### STATEMENT OF THE CASE

Michael returns to the South Dakota courts with grievances about the GFLP. See Gibson v. Gibson Family Ltd. P'ship, 2016 S.D. 26, ¶¶ 2-7, 877 N.W.2d 597, 599-600 (discussing prior litigation brought by Michael). This time, he includes claims against Greg's wife, Joan, and GFLP's attorney, Ronayne. The Amended Complaint includes seven counts, and only Counts Two and Three concern Ronayne. (CR 18-35.) In Count Two, Michael claims that Greg breached fiduciary duties owed to Michael. (CR 29-30.) In Count Three, Michael claims that Ronayne aided and abetted Greg's breaches of fiduciary duty. (CR 30-32.)

Greg and Ronayne moved to dismiss Counts Two and Three of the Amended Complaint under SDCL 15-6-12(b)(5). (CR 43-51; 60-68.) Because both Counts Two and Three are legally dependent upon the existence of a fiduciary duty between Greg and Michael, and the moving defendants asserted no duty exists between limited partners, the moving defendants sought dismissal for failure to state a claim upon which relief can be granted. (*Id.*) Following a hearing on March 26, 2024, the Honorable Carmen A. Means denied the motions to dismiss. (CR 512.)

GLFP moved the Court for sanctions against Michael based upon his counsel's repeated violations of the Rules of Civil Procedure and discovery

abuses, including the sanction of dismissal with prejudice. (CR 964-965.) Greg, Joan, and Ronayne joined the motion. (CR 1341-1342; CR 1520-1522.) Judge Means granted GFLP's Motion. (CR 2429-2431.) She denied Michael's Motion for Reconsideration. (CR 2566-2567.)

### STATEMENT OF FACTS

The late Delores Gibson and her two sons, Greg and Michael, were partners in the GFLP, which was formed in 2002. (CR 18.) Delores was the only general partner GFLP ever had, and owned 8.266% of the partnership. (CR 19.) Greg and Michael were limited partners, owning 45.802% each. (CR 18.) This Court described the GFLP in its prior decision:

Neither Michael nor Greg paid for their interests in the partnership. Delores serves as the general partner, and Michael and Greg are limited partners. As the sole general partner, Delores is responsible for management of the partnership. Under the partnership agreement, Delores has sole authority to decide with whom the partnership conducts business and whether to distribute income. As limited partners, Michael and Greg have no significant duties.

Gibson v. Gibson Family Ltd. P'ship, 2016 S.D. 26, ¶ 2, 877 N.W.2d 597, 599.

Michael has twice before litigated issues concerning the GFLP. In April 2007, Michael filed suit against GFLP, Delores, and Greg, asserting various claims, including a claim that Delores breached her fiduciary duty as GFLP's general partner by loaning money to Greg. Id. Michael also pleaded causes of action for intentional interference with contract, enforcement of oral lease agreements, slander, negligence, fraud and deceit, accounting and valuation of the limited partnership, and judicial dissolution of the

partnership. Id. at n.1. In September 2008, GFLP leased its 2,060 acres to Greg and Joan's corporation, Champaygn Ranch, Inc. Id. at ¶ 3, 877 N.W.2d at 599. In December 2009, Michael's 2007 suit went to trial, and the jury rejected Michael's claims that Delores breached her fiduciary duty by loaning money to Greg and GFLP property to Greg. Id.

In June 2011, Michael commenced another action and asserted six claims against GFLP and Delores in her capacity as general partner. Id. at ¶ 5, 877 N.W.2d at 599. Michael again claimed that Delores breached her fiduciary duties based, in part, on the partnership's land transactions with Greg. Id. at ¶5, 877 N.W.2d at 600. Michael contended that he was "frozen out" out of the partnership and that he was incurring tax liabilities without receiving partnership distributions to pay them. Id. The case was tried, the jury returned a defense verdict on the fiduciary duty claim, and the remaining claims were either dismissed or not appealed. Id. This Court affirmed on all grounds.

This third action brought by Michael follows a real estate sale that closed on September 12, 2022. (CR 25.) The sale grew from a prior agreement GFLP made with Greg and Champaygn Ranch, Inc. On April 19, 2022, Delores and Greg signed a "Lease and Agreement (with option to purchase under certain conditions)." (CR 267-286.) Under the Lease and Agreement, Delores granted Greg and Champaygn Ranch, Inc., an exclusive option to purchase GFLP property. (CR 270.) Upon notice of intent to

exercise the option, GFLP was to procure a real estate appraisal. (Id.) If Greg and Champaygn Ranch, Inc., decided to exercise the option, they were required to pay the purchase price in full within 60 days of notice of exercise. (CR 271.)

The land was appraised by Greg Neu, who established certain values as of July 9, 2022. (CR 23.) In August 2022, Greg communicated his intent to exercise the option and purchase three parcels of the GFLP's real estate. (CR 24.) Ultimately, Greg and Joan paid \$2.95 million to GFLP in exchange for certain tracts of GFLP real estate. (CR 25.) This purchase price was based on the values for the three parcels in Neu's appraisal. (CR 24.)

The Amended Complaint recognized Delores's status as general partner: "Non-party Delores Gibson is the mother of Greg and Mike, **and the general partner for the Gibson Family Limited Partnership.**" (CR 19.) The GLFP Partnership Agreement states:

5. THE GENERAL PARTNER. The General Partner and the General Partner's street addresses are:

Delores Gibson  
RR1, Box 191  
Goodwin, SD 57238

Reference to the "General Partner" used in the singular will also include the plural.

If a General Partner, serving alone, ceases to serve for any reason, and if the Limited Partners have not elected a new General Partner within 90 days from the effective date of withdrawal of a General Partner, it is agreed that, without amendment to these Articles, the following persons will serve as

the Substitute General Partners: Gregory J. Gibson and, Michael A. Gibson.

The designated Successor General Partner will not have the duties nor the Liability of a General Partner until such time as the successor actually assumes the position of a General Partner. A General Partner who ceases to be a General Partner will not be personally liable for the debts and obligations of the Partnership incurred following the termination of his, her, or its service as a General Partner. The Successor General Partner, will have the right and authority to execute an amendment to the Certificate of Limited Partnership in the event the General Partner, who has ceased to serve, is unable by reason of death, disability, or absence, or who refuses, to execute the Certificate as attorney in fact for the withdrawing General Partner.

(CR 143.)

The Amended Complaint includes a conclusory allegation that Greg, a limited partner, "owes a duty of loyalty and duty of care to GFLP property and to each partner thereof." (CR 18, 29.) It does not allege that Delores ceased to be the general partner, or that Greg replaced her as general partner at any time relevant to the allegations underlying Michael's case.

## ARGUMENT

**A. The Circuit Court properly dismissed the case as a sanction for numerous rule violations.**

Pursuant to SDCL 15-26A-67, Ronayne adopts by reference all arguments set forth in the Appellee Briefs filed by Greg, Joan, and GFLP that pertain to the Circuit Court's judgment of dismissal under SDCL 15-6-41(b) and denial of Michael's motion to reconsider. Ronayne respectfully requests that the judgment of dismissal be affirmed.

**B. Alternatively, because limited partners do not owe fiduciary duties to one another, the Circuit Court should have dismissed Counts Two and Three of the Amended Complaint.**

"This Court's standard of review of a trial court's grant or denial of a motion to dismiss is the same standard as that which is applied upon review of a motion [for] summary judgment – 'is the pleader entitled to judgment as a matter of law?' " Heine Farms v. Yankton Cnty., 2002 S.D. 88, ¶ 8, 649 N.W.2d 597, 599 (quoting Hagemann v. NJS Engineering, Inc., 2001 S.D. 102, ¶ 4, 632 N.W.2d 840, 842). "Therefore, we review all facts most [favorably] to the [nonmoving] party." Id. We continue to review questions of law, particularly issues of statutory construction, *de novo*." Id. (citations omitted). The existence of a fiduciary duty is a question of law for the Court. Cole, 2009 S.D. 108, ¶ 45, 776 N.W.2d 240, 253. A motion to dismiss is an appropriate means of disposing of claims where no duty exists. See Fodness v. City of Sioux Falls, 2020 S.D. 43, ¶¶ 13-32, 947 N.W.2d 619, 625-630 (affirming orders granting motion to dismiss and denying motion to amend because of failure to demonstrate a duty owed to plaintiff).

**1. Neither the common law nor the GFLP Partnership Agreement nor South Dakota statutes create a fiduciary duty between limited partners like Michael and Greg.**

As Michael tacitly recognized below, "the common law, GFLP Partnership Agreement and South Dakota statutes are silent on a limited partner's fiduciary duties." (CR 177.) Against this legal backdrop, "the allegations show on the face of the complaint there is some insuperable bar to

relief, [and] dismissal under Rule 12(b)(5) is appropriate." Sisney v. State,

2008 S.D. 71, ¶ 8, 754 N.W.2d 639, 643. Count Two of Michael's Amended Complaint should have been dismissed.

A fiduciary has a duty to act primarily for the benefit of the other. Ward v. Lange, 1996 S.D. 113, ¶ 12, 553 N.W.2d 246, 250. To create a fiduciary relationship, one must have, in addition to "confidence of the one in the other," the existence of "a certain inequality, dependence, weakness of age, of mental strength, business intelligence, knowledge of the facts involved, or other conditions, giving to one advantage over the other." Cole, 2009 S.D. 108, ¶ 46, 776 N.W.2d at 253 (quoting Garrett v. BankWest, Inc., 459 N.W.2d 833, 838 (S.D. 1990)) (emphasis in original)). If a fiduciary relationship is deemed to exist, then a separate legal cause of action may be brought for a breach of the fiduciary duty. See Chem-Age Industries, Inc. v. Glover, 2002 S.D. 122, ¶ 38, 652 N.W.2d 756, 773. In South Dakota, most commercial or business relationships do not rise to the level of a fiduciary relationship when the parties are dealing over an arms-length transaction. High Plains Genetic Research, Inc. v. JK Mill-Iron Ranch, 535 N.W.2d 839, 842 (S.D. 1995) (citing Taggart v. Ford Motor Credit Co., 462 N.W.2d 493, 500 (S.D. 1990)).

Michael failed to plead that any facts that would give rise to a fiduciary duty under this Court's decisions. He makes no allegation that he reposed faith, confidence, and trust in Greg. Nor did he argue below, in any

respect, that he satisfied the tests that this Court has developed that would have created such a duty between Greg and Michael. (CR 169-184.) He simply alleges that "Greg owes a duty of loyalty and duty of care to GFLP property and to each partner thereof." (CR 29.)

Likewise, the GFLP Partnership Agreement is silent as to the existence of fiduciary duties. As this Court recognized in the prior litigation, that "[a]s limited partners, Michael and Greg have no significant duties." Gibson, 2016 S.D. 26, ¶ 2, 877 N.W.2d at 599. "At oral argument, Michael admitted that his position in the limited partnership is like that of a passive investor." Id., ¶ 11, 877 N.W.2d at 601. Indeed, Michael pleads nothing in his Amended Complaint to demonstrate how any fiduciary duty is created by the GFLP Partnership Agreement.

In a similar setting, where a limited partnership agreement imposed no specific duties, the Wyoming Supreme Court analyzed other possible sources for fiduciary duties among limited partners. "[T]here is no common law duty owed by a limited partner to a general partner, the limited partnership, or other limited partners." Wallop Canyon Ranch, Ltd. Liab. Co. v. Goodwyn, 2015 WY 81, ¶ 43, 351 P.3d 943, 955. "Thus, if any duties exist, they must be found in statutes." Id. The Wyoming Court looked to the Wyoming Uniform Limited Partnership Act and concluded that no fiduciary duty exists: "the WULPA is silent regarding duties imposed upon a limited partner in a limited partnership. Accordingly, the WULPA imposes no

explicit statutory duties or responsibilities upon a limited partner.” Id. ¶ 44, 351 P.3d at 956.

Similarly, in South Dakota, a general partner of a limited partnership “has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.” SDCL 48-7-403; Cf. Wyo. Stat. § 17-14-503. However, no similar provision imposes upon limited partners the same duties. South Dakota’s Uniform Limited Partnership Act, like Wyoming’s version, is silent regarding fiduciary duties being imposed upon a limited partner in a limited partnership. Accordingly, South Dakota law imposes no explicit statutory fiduciary duty upon a limited partner like Greg.

Michael’s sole argument against dismissal below was that Delores somehow ceased to serve as GFLP’s general partner. That argument contradicted his own pleading and sworn statements. At no point did Michael allege that Greg assumed the duties of the general partner during the relevant timeframes in 2022 when the “Disputed Transaction” took place. Instead, his pleading recognized Delores’s status as general partner: “Non-party Delores Gibson is the mother of Greg and Mike, **and the general partner for the Gibson Family Limited Partnership.**” (CR 19.) (Emphasis added.) Similarly, Michael signed a declaration on February 27, 2024, declaring “under penalty of perjury” in paragraph 3, “[m]y mother, Delores Gibson, is the General Partner and has management control as such.” (CR 136.) In paragraph 4, Michael declares “[m]y mother, Delores

Gibson, is the sole General Partner of GFLP and owns 8.4% of this partnership.\* (Id.)

Michael's position also runs contrary to the GFLP Partnership Agreement, which states: "[t]he designated Successor General Partner will not have the duties nor the liability of a General Partner until such time as the successor actually assumes the position of a General Partner." (CR 143.) Again, there is no allegation in the Amended Complaint of Delores's withdrawal, no allegation of an effective date of Delores's withdrawal, and no allegation concerning an election of a new general partner within 90 days of Delores's withdrawal. There is also no allegation that Greg executed an amendment to the Certificate of Limited Partnership, which is also contemplated in the event the general partner has ceased to serve. Any argument that a fiduciary duty between Michael and Greg springs from Greg supposedly serving as a substitute general partner is fundamentally unsupported by the allegations of the Amended Complaint and the plain language of the agreement.

Michael relied primarily upon Red River Wings, Inc. v. Hoot, Inc., 2008 ND 117, 751 N.W.2d 206 (2008), to support his position that limited partners could face liability for breach of fiduciary duty. However, Red River Wings, Inc., involved drastically different facts. In that case, a majority group of limited partners effectuated a literal ouster of the general partner and then claimed they owed no fiduciary duties to the minority group of limited

partners who were victimized by the majority group's missteps. The applicable North Dakota law in effect at the time of the ouster stated: "[A] person ceases to be a general partner of a limited partnership upon the happening of any of the following events: . . . The general partner is removed as a general partner in accordance with the partnership agreement." N.D.C.C. § 45-10.1-26(3). "This event occurred when the majority partners voted to remove Red River Wings as the general partner under the terms of the partnership agreements." Red River Wings, Inc., 2008 ND 117, ¶ 19, 751 N.W.2d at 217.

Unlike in Red River Wings, Inc., there was no hostile takeover of GFLP by limited partners. Delores remained the general partner at the time of the September 2022 transaction. If Michael's pleading and Declaration is accepted as true, she continued in that position into 2024.

Because Greg was a limited partner in the GFLP, he did not owe fiduciary duties to Michael. Count Two of the Amended Complaint fails to state a plausible claim. It should have been dismissed.

## **2. Count Three also should have been dismissed.**

Without the support of the underlying breach of fiduciary duty, Count Three of the Amended Complaint necessarily fails. "[A] fundamental requirement of establishing a claim for aiding and abetting is the existence of an underlying tort." Gantvoort v. Ranschau, 2022 S.D. 22, ¶ 40, 973 N.W.2d

225, 237 (citing Chem-Age Indus., 2002 S.D. 122, ¶ 46, 652 N.W.2d at 775).

Count Three should have been dismissed on this basis.

Similarly, while no separate count is pled in the Amended Complaint, within Count Two in paragraph 79, Michael alleges: "Ronayne was also acting in conspiracy with Greg Gibson and Joan Gibson to defraud Michael Gibson from his correct partnership shares." (CR 30.) "[Civil conspiracy] is not an independent cause of action, but is sustainable only after an underlying tort claim has been established. A civil conspiracy is, fundamentally, an agreement to commit a tort." Gantvoort, 2022 S.D. 22, ¶ 50, 973 N.W.2d at 240 (quoting Setliff v. Stewart, 2005 S.D. 40, ¶ 27, 694 N.W.2d 859, 867). For Michael to have a plausible conspiracy claim, he must have a plausible underlying breach of fiduciary duty claim. The lack of a fiduciary duty among the limited partners makes Count Two implausible.

#### **CONCLUSION**

Ronayne respectfully urges the Court to affirm the dismissal of Michael's case with prejudice based upon the numerous violations of the rules of civil procedure and discovery abuses presented to the Circuit Court. Alternatively, Ronayne urges the Court to reverse the Circuit Court's denial of his motion to dismiss Counts Two and Three of the Amended Complaint.

Respectfully submitted this 6<sup>th</sup> day of October, 2025.

RICHARDSON, WLY, WISE, SAUCK &  
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## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with SDCL 15-26A-66(b). This brief is 15 pages long, exclusive of the Table of Contents, Table of Authorities, Certificate of Compliance, and Certificate of Service; is typeset in Century Schoolbook (12 pt.) and contains 3,464 words. The word processing software used to prepare this brief is Microsoft Word 2019 MSO.

Dated this 6<sup>th</sup> day of October, 2025.

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## CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Appellees Robert Ronayne and Ronayne Law Office, P.C., hereby certifies that on the 6<sup>th</sup> day of October, 2025, a true and correct copy of **BRIEF OF APPELLEES ROBERT RONAYNE AND RONAYNE LAW OFFICE, P.C.** was served through eFileSD on:

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The original was mailed on October \_\_\_, 2025, by first-class mail, postage prepaid, to: Ms. Shirley Jameson-Fergel, Clerk of the Supreme Court, Supreme Court of South Dakota, State Capitol Building, 500 East Capitol Avenue, Pierre, SD 57501-5070.

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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

---

MICHAEL A. GIBSON

Appellant,

-vs-

GREG GIBSON, individually; JOAN GIBSON, individually; GIBSON  
FAMILY LIMITED PARTNERSHIP, a South Dakota Limited Partnership;  
ROBERT M. RONAYNE; and RONAYNE LAW OFFICE, P.C.,

Appellees.

---

Appeal No. 31073

---

APPEAL FROM THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT  
CODINGTON COUNTY, SOUTH DAKOTA

---

THE HONORABLE CARMEN A. MEANS,  
CIRCUIT COURT JUDGE

---

**APPENDIX OF APPELLEES ROBERT M. RONAYNE  
and RONAYNE LAW OFFICE, P.C.**

---

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NOTICE OF APPEAL FILED  
APRIL 25, 2025

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STATE OF SOUTH DAKOTA )  
 ) :SS  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

MICHAEL A. GIBSON,

14CIV23-000350

Plaintiff,  
v.

GREG GIBSON, individually; JOAN  
GIBSON, individually, and GIBSON  
FAMILY LIMITED PARTNERSHIP, a South  
Dakota Limited Partnership; ROBERT M.  
RONAYNE, and RONAYNE LAW OFFICE,  
P.C.,

**(PROPOSED) ORDER DENYING  
MOTION TO DISMISS**

Defendants.

This matter came on before the Court on the 26<sup>th</sup> day of March, 2024.

Based upon the argument of counsel and presentations to the Court,

IT IS HEREBY ORDERED that the motion of Defendants' to dismiss is hereby  
DENIED.

Defendants shall have ten (10) days in which to Answer Plaintiff's Complaint. In  
addition, Defendants shall respond to outstanding discovery no later than April 25, 2024.

4/19/2024 9:46:25 AM  
MM/DD/YYYY HH:MM:SS AM

*Carmen A. Means*  
Honorable Carmen A. Means  
Circuit Court Judge

Attest:  
Beachler, Kaylee  
Clerk/Deputy



IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

---

No. 31073

---

Michael A. Gibson

Appellant,

v.

Greg Gibson, Individually, Joan Gibson, Individually, and Gibson Family Limited Partnership, a South Dakota Limited Partnership; Robert M. Ronayne, and Ronayne Law Office, P.C.

Appellees.

---

Appeal from the Circuit Court, Third Circuit  
Codington County, South Dakota

The Honorable Carmen Means  
Circuit Court Judge

---

**APPELLANT MICHAEL A. GIBSON'S REPLY BRIEF**

---

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Notice of Appeal filed April 25, 2025

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#### PRELIMINARY STATEMENT

Citations to the record are designated as "CR." Citations to the transcript of the hearing on the Motion to Dismiss are designated as "Tr." while citations to the transcript of the hearing on the Motion for Reconsideration are designated as "MFR Tr." Citations to Appellant's Appendix are designated as "App." Citations to Appellant's Supplemental Appendix are designated as "Suppl. App."

References to "Appellant" or "Mike" mean Appellant Michael A. Gibson. References to "Greg" mean Appellee Greg Gibson, while references to "Joan" mean Appellee Joan Gibson. The "Gibson Appellees" refers collectively to Greg and Joan. Citations to their brief are designated as "Gibsons' Br." References to "GFLP" or the "Partnership" means Appellee Gibson Family Limited Partnership. Citations to its brief are designated as "GFLP Br." "Ronayne" refers collectively to Appellees Robert Ronayne and Ronayne Law Office, P.C. Citations to their brief are designated as "Ronayne Br." Finally, references to the "Appellees" collectively refers to Greg, Joan, GFLP, and Ronayne.

#### JURISDICTIONAL STATEMENT

GFLP and the Ronayne Appellees unsuccessfully challenge this Court's jurisdiction in this appeal on different grounds.

First, GFLP asserts Mike failed to submit the costs bond required by SDCL 15-26A-23. GFLP Br. at 1-2. This is false. The (redacted) check for \$500.00 made out to the Codington County Clerk of Courts on April 25, 2025, is attached to Mike's Supplemental Appendix, Suppl. App. 00001. Mike has fully complied with SDCL 15-26A-23.

Second, Ronayne asserts that the Court does not have jurisdiction to review the circuit court's taxation of disbursements. Ronayne Br. at 1-2. However, Mike does not contend the circuit court failed to follow statutory procedure when taxing costs or that it taxed inappropriate costs. *See SDCL 15-6-54(d), 15-17-37.* Rather, Mike challenges the underlying judgment that made the Appellees "prevailing parties." Therefore, he did not need to file a separate notice of appeal after the circuit court amended its judgment by inserting the amount of costs. If the judgment is affirmed, so is the taxation of costs. Conversely, if the judgment is reversed, the taxation of costs is automatically vacated. SDCL 15-17-56 ("Disbursements taxed by a party, in the trial court, who did not prevail on appeal, are void").

#### STATEMENT OF LEGAL ISSUES ON REVIEW

1. The circuit court properly denied the Gibson Appellees' and Ronayne's Motions to Dismiss Appellant's claims for breach of fiduciary duty and aiding and abetting or conspiring to breach a fiduciary duty.

The circuit court properly determined Michael Gibson stated plausible claims for breach of fiduciary duty and aiding and abetting or conspiring to breach a fiduciary duty under SDCL 15-6-12(b)(5) when the Amended Complaint alleged that Greg Gibson participated in the control of the Gibson Family Limited Partnership's business and exercised control over its general partner.

- *Ward v. Lange*, 1996 S.D. 113, 553 N.W.2d 246
- *Trahan v. Lazar* 457 F.Supp.3d 323 (S.D.N.Y. 2020).

## ARGUMENT

Before the actual issues in this appeal can be addressed on reply, Appellees' attempt to fundamentally alter the landscape of the appeal and the record it is based on must be rectified. Specifically, the Gibson Appellees represent an abuse of discretion standard of review applies to the entire appeal, which they also use to further their effort to open the universe of this appeal beyond its purview. In doing so, they discuss the standard of review in conjunction with the circuit court's "inherent authority" to tee up Appellees' subsequent efforts to expand this Court's review beyond the scope of the Judgment and SDCL 15-6-41(b). *See* Gibsons' Br. at 19.

However, whether through "inherent authority" or otherwise, there is no "misconduct" to sanction with dismissal unless and until the trial court makes findings and conclusions to that effect. *See id.* Indeed, this Court applies "three distinct standards of review" in these cases. *See, e.g., Olson v. Huron Reg'l Med. Ctr., Inc.*, 2025 S.D. 34, ¶ 17, 24 N.W.3d 405, 412. First, findings of fact are reviewed under the clearly erroneous standard. *Id.* (citation omitted). Second, the de novo standard is applied when reviewing the conclusions of law. *Id.* And finally, the Court reviews the "ultimate decision to dismiss" under the abuse of discretion standard. *Id.* While true trial courts have inherent authority to sanction misconduct, it is subject to restrictions set forth by this Court. Appellees' view would render limitations delineated by this Court in precedent and statutes like Rule 41(b) or Rule 11(c) superfluous.

Accordingly, because the circuit court entered a judgment on the merits, it must have done so in compliance with Rule 41(b), which allows the court to do so for violations of SDCL Chapter 15-6 or court orders. *S.W. Croes Family Tr. v. Small Bus. Admin.*, 446 N.W.2d 55 (S.D. 1989) ("Pursuant to SDCL 15-6-41(b) and (c), the court

has power to grant a motion to dismiss a pleading when the pleader has failed to comply with the rules of civil procedure (SDCL ch. 15-6), or failed to comply with any order of the circuit court.”). Although the verbal ruling was not a model of clarity, it did make clear the Judgment was principally based on “rules that are in place and the statutes that are in place to protect privileged and private medical records.” (Tr.27:6-13).

Appellees’ endeavor to exceed the purview of Rule 41(b) and the Judgment is derived from the fact the settled record does not allow them to prevail. It is why their primary tactic on appeal is to place the cart before the horse and focus on the ultimate discretionary decision to dismiss, rather than substantive legal issues in the underlying conclusions. This is further borne out by Appellees’ repeated insinuations that identifying and addressing these issues with commonplace legal arguments are salacious acts worthy of condemnation. Because Appellees cannot claim these arguments are frivolous, they misapprehend their purpose by suggesting Mike simply seeks the tacit endorsement of his trial counsel’s decisions and they litter ad hominem attacks against Mike to justify dismissing his case for actions he had nothing to do with. By failing to meet these issues on their merits, however, Appellees not only leave the fact that the Judgment is based on improper conclusions of law, they also leave the most compelling reason as to why dismissal was an abuse of discretion unrefuted; it was based solely on an attorney’s decisions on procedural nuance that was, at a minimum, not directly answered by South Dakota law.

For the reasons already set forth and those that follow, Mike respectfully requests that this Court vacate the Judgment and remand his case for further proceedings.

**I. THE JUDGMENT IS NOT SUPPORTED BY SUFFICIENT FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

All Appellees fail to offer any response to the issues with the lack of findings and conclusions as to the underlying alleged discovery conduct, the statute or rule the court determined was violated, or the fact there was no *in camera* review of the medical records in the first instance. Rather, GFLP implicitly acknowledges the findings and conclusions were insufficient by arguing none were required at all. Meanwhile, the Gibson Appellees ignored the legal questions and jump straight to the dismissal by narrowly pointing to commentary they describe as Sortland's purported "recalcitrance." Both arguments fail.

For its part, GFLP claims findings and conclusions are only required under "Rule 41(b) and Rule 52(a) where an action is tried to the court[J]" GFLP Br. at 23. *See* at 22-23. To reach this conclusion, GFLP *selectively* quotes ten words from Rule 41(b) to claim it only "contains a provision that provides for entry of findings of fact and conclusions of law—'in an action tried by the court without a jury.'" *Id.* The express language of Rule 41(b) dictates otherwise:

For failure of the plaintiff to prosecute or to comply with this chapter or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff's evidence, the defendant, without waiving the defendant's right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. *If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in § 15-6-52(a).* Unless the court in its order for dismissal otherwise specifies, *a dismissal under this section* and any dismissal not provided for in § 15-6-41, other than a dismissal for lack of jurisdiction, or for failure to join a party under § 15-6-19, *operates as an adjudication upon the merits.*

(Emphasis added).

On the other hand, the Gibson Appellees claim there are sufficient findings and conclusions, but they are only able to point to the circuit court's commentary on what they describe as Sortland's "recalcitrance" at the hearing, "the severity of counsel's conduct," and previous litigation between the parties. Gibsons' Br. at 18. While Mike maintains the circuit court did not weigh the appropriate factors to determine the sanction, this commentary has nothing to do whether a rule was violated and how. In fact, although Appellees refer to "the severity of counsel's conduct," the only conduct they can identify is Sortland would not "concede he failed to comply with the rules and abused the discovery process" at the hearing. *Id.* The Gibson Appellees likely recognized this issue given they immediately pivot their position that an abuse of discretion governs the appeal *before* addressing the substantive law. *Id.* at 19.

Because the Judgment is not supported by sufficient findings of fact and conclusions of law, it must be vacated.

**II. THE LIMITED FINDINGS AND CONCLUSIONS UNDERLYING THE JUDGMENT ARE INCONSISTENT WITH SOUTH DAKOTA LAW,**

As set forth above, the circuit court's dismissal must be based on a violation of Chapter 15-6. The only violations alleged within the scope of the Judgment consist of allegations Sortland did not comply with SDCL 15-6-45(b) because: (1) Appellees claimed they did not have proper advance notice of the subpoenas for medical records; and (2) Sortland's legal assistant received copies of medical records after GFLP filed a Motion to Quash. Both arguments fail.

**A. Appellees had Notice of the Subpoenas for Medical Records and an Opportunity to Object.**

The record establishes the subpoenas for medical records were served in compliance with Rule 45(b). Appellees' arguments are written with a tenor suggesting they did not receive proper notice of the subpoenas for medical records before they were served. Gibsons' Br. at 17, 20; GFLP Br. at 26. However, they fail to disclose their insinuation is based solely on them receiving the subpoenas without a cover page bearing the caption, "Notice of Intent to Serve." (App.00017-00040). Failing to include the cover page when serving subpoenas on counsel is a technical error, not a substantive one, and it certainly does not justify dismissal. *See Wagner v. Truesdell*, 1998 S.D. 9, ¶¶ 6, 574 N.W.2d 627, 629 (holding that service of a summons was not defective because it was "substantially compliant" with the rule). Indeed, although GFLP devotes several pages to discussing the importance of having the opportunity to object, it filed a Motion to Quash on the same day the recipients were served with the subpoenas. (CR819); (App.00070).

GFLP also claims in passing Sortland was required to file returns of service for the subject subpoenas earlier than January of 2025. However, it provides no authority because there is no requirement to file a return of service in the first instance under Chapter 15-6. Appellees' efforts to tally the chalkboard with grievances even if they do not square with scope of the Judgment and Chapter 15-6 is indicative of the fact that actual conduct at issue was insufficient to warrant dismissal.

**B. The Plain Language of Rule 45(b) Did Not Require the Procedure Appellees' Relied on to Request Sanctions.**

Ironically, Appellees take great offense to the suggestion GFLP, as the movant, was obligated to comply with the law and prosecute its Motion by seeking relief. In an

effort to contest GFLP's obligation, Appellees claim obligations to comply with discovery indefinitely halt upon the filing of a motion and turn to inapplicable sources outside of Rule 45(b) and Chapter 15-6 altogether.<sup>1</sup> However, the conclusion that the plain terms of Rule 45(b) do not circumscribe the conduct at issue remains the same. This conclusion remains significant regardless of what the Court decides on these distinct issues because it is reflective of its reluctance to uphold dismissals based on the acts of "errant attorneys." A party should not have their case dismissed because of the decision an attorney made on procedural nuances.

First, Appellees jointly contest GFLP's obligation to prosecute its Motion to Quash by claiming "it would be impossible for the subpoenaed party to file a motion to quash, obtain a hearing, and receive a ruling in time." Yet, this is not a position Mike has taken. The litany of authority he cited specifically explains that the "least that [a party] can be expected to do" is get an order temporarily staying the obligation until there is time for it to be heard. *See, e.g., Hepperle v. Johnston*, 590 F.2d 609, 613 (5th Cir. 1979) (quoting *Pioche Mines Consolidated, Inc. v. Dolman*, 333 F.2d 257, 269 (9th Cir. 1964)). The Gibson Appellees' attempt to distinguish these cases on the premise they primarily concerned a party's objection, not a non-party, only proves the conclusion. Gibsons' Br. at 24, n. 11. The only objection filed was by and for GFLP, a party. Notably, Appellees

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<sup>1</sup> The Gibson Appellees also argue Sortland did not comply with the obligation to meet and confer under Rule 37(a). Rule 37(a) is not only outside of the Judgment, the obligation to meet and confer thereunder is part of the certification requirement for motions to compel. SDCL 15-6-37(a). Additionally, it was Sortland who proposed working out a stipulation after GFLP filed its Motion to Quash. (App.00072). GFLP's counsel advised he would send a proposal the following week. *Id.* When he failed to do so, Sortland sent a proposed stipulation. (App.00075-00079). He received no response. *Id.* The next time Appellees "communicated" about the issue was GFLP's Motion to Dismiss. *Id.*; (App.00080-00082).

do not respond to the argument that GFLP did not have standing to object. *See Hollow Horn v. Firstcomp. Ins. Co.*, 5:17-CV-05016-JLV, 2020 WL 6591306, at \*2 (D.S.D. May 4, 2020) (“Generally, a party to a lawsuit does not have standing to seek to quash a subpoena directed to a non-party—that power lies with the non-party.”).<sup>2</sup>

Second, GFLP relies on a procedure set forth under Rule 45(d) and through more careful quoting, omits its express language limiting its application to subpoenas for depositions. SDCL 15-6-45(d) (entitled “Subpoena for taking depositions—Place of examination.”). Specifically, Rule 45(d) clarifies that subpoenas for depositions may also command the deponent to produce documents and then sets forth the following procedure:

The person to whom the subpoena is directed may, within ten days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

*Id.* The inclusion of this language in Rule 45(d), but not in Rule 45(b) only furthers the conclusion that Rule 45(b) does not explicitly require the procedure Appellees seek retribution for. In fact, Rule 45(d) expressly directs that deposition subpoenas which command production of documents are also subject to Rule 45(b). *Id.* Rule 45(b),

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<sup>2</sup> GFLP asserts in its brief (at p. 32): “[Mike] knew Attorney Evans represented GFLP and Delores—just as Attorney Evans had done since 2006—and that Attorney Evans on behalf of Delores had objected to Sortland’s attempt to obtain Delores’ medical records.” Attorney Evans, who filed a Motion to Quash on behalf of GFLP, did not file a Motion to Quash on behalf of Delores.

however, does not make a similar incorporation to the above procedure. Perhaps the exclusion of this language from Rule 45(b) is an unintended discrepancy this appeal will clarify, but the fact remains that its “plain language” does *not* “prohibit[] inspection of records” upon the filing of a motion. GFLP Br. at 30.

Lastly, GFLP pivots completely outside of Chapter 15-6 and later, South Dakota law entirely, by claiming Sortland violated the physician-patient privilege and/or HIPAA when PLHS sent medical records while GFLP’s Motion to Quash was idling. Although the tone of the argument is certainly impassioned, its various ostentatious propositions, such as, “[Sortland] was “required to ensure his subpoenas were HIPAA compliant,” are not supported with legal authority. That is why Appellees altogether fail to respond to clear matters of law, including, GFLP lacked standing to object on the basis of privilege, the privilege was waived, that the circuit court did not conduct an *in camera* review, and only applies to covered entities and creates no private right of action. The fact Appellees’ resort to authority outside of South Dakota to set forth the procedure they contend was required reinforces the conclusion it was not required under Rule 45(b)’s language. While this Court may certainly choose to adopt the approach set forth in cases like *Keplinger*, it had not done so at the time, which emphasizes the impropriety of the sanction.

#### **C. Alleged Violations of the South Dakota Rules of Professional Conduct are Not Preserved for Appeal.**

The Court need not consider Appellees’ arguments concerning the South Dakota Rules of Professional Conduct on their merits for two reasons. First, a judgment of dismissal may only be entered under Rule 41(b) for violations of Chapter 15-6 or court orders. Neither is implicated here. Second, GFLP correctly concedes that “the circuit

court did not expressly state that Sortland's conduct violated the Rules of Professional Conduct." GFLP Br. at 29. While the Gibson Appellees fail to cite to any legal authority allowing the Court to determine a violation of an ethical rule for the first time on appeal, GFLP, on the other hand, cites to *Abata v. Pennington Cnty Board of Comm'rs* for the proposition that "[this Court] can affirm the circuit court for any basis which supports the court's ultimate determination." 2019 S.D. 39, ¶ 8, 931 N.W.2d 714, 718. Once again, however, GFLP conveniently fails to acknowledge this is the standard for reviewing rulings on summary judgment, which, unlike a judgment on the merits, do not require findings or conclusions.

Even if this Court considers the issue, the record reflects Sortland did not violate the Rule 4.4(a), as relied on by Appellees. GFLP argues Sortland violated the rule by "[s]eeking discovery of information that Plaintiff knew they were not entitled to receive[.]" First, there is no finding in the record Sortland "knew" he was not entitled to receive the information. Second, the record actually supports the conclusion Appellant *was* entitled to receive the information, but Appellees choose not to address those issues on the merits. As Appellant explained, the medical records were directly relevant to the claim for undue influence upon Delores, and, moreover, the physician-patient privilege was waived under SDCL 19-2-3 because Delores' physical or mental health was at issue. Third, there is also no finding or evidence to support GFLP's contention Sortland intentionally violated Rule 4.4 by misleading anyone. The subject subpoenas were filed with the Court with notice of the filings to the other parties, Sortland communicated with opposing counsel regarding the subpoenas, the objections, and sent a copy of an unfiled Motion to Amend and the Second Amended Complaint indicating if the parties cannot

reach an agreement, he will need to schedule the motion. No response was given, and Sortland filed the motion. (App.00080-00082; CR887; CR857-83).

Consequently, and contrary to the Gibson Appellees' arguments, Sortland's conduct was not "misconduct" under Rule 8.4 either. Gibsons' Br. at 21. The record reflects Sortland attempted to serve the subpoenas in the correct manner (App.00051-55), was mindful of the opportunity for the parties to file motions to quash (App.00053), promptly corrected discovered errors with the subpoenas missing statutorily required text (CR758, 777-90, 791-818, 947-50, 957-63, 1157-1226), communicated with counsel regarding objections (App.00072), produced the documents received (App.00080-00082), and provided a copy of the draft amended complaint to counsel before filing the same, all of whom had no response (App.00080-00082; CR887; CR857-83). Accordingly, Sortland did not engage in "misconduct" under the rule, and especially any kind that warranted dismissal of his *client's* lawsuit with prejudice. Appellees' reliance on the ethical rule only further demonstrate the Judgment has nothing to do with Mike.

### **III. THE CIRCUIT COURT ABUSED ITS DISCRETION BY DISMISSING MIKE'S CASE FOR HIS TRIAL COUNSEL'S PROCEDURAL DECISIONS.**

The conclusion that the circuit court abused its discretion by dismissing the case is inescapable. Because it is undisputed the Judgment was based solely on Sortland's decision on procedural issues, Appellees resort to ad hominem attacks on Mike in an effort to obfuscate this Court's reluctance to "uphold dismissals merely to sanction errant attorneys." *Dudley v. Huizenga*, 2003 S.D. 84, ¶ 13, 667 N.W.2d 644, 648. While attorneys and their clients are often merely an extension of each other, this Court has never viewed these issues from that lens. At the end of the day, *Sortland's* actions do not justify dismissing *Mike's* case with prejudice.

The lack of justification for dismissal is demonstrated through this Court's five factor test that Mike addressed in detail in his opening brief, including the circuit court's failure to adequately weigh and consider all of them. In turn, Appellees only directly address three of them: (1) whether Mike was warned that if his attorney continued with a specific action his case would be dismissed; (2) whether less drastic sanctions could be imposed; and (3) whether the conduct at issue was done willfully or in bad faith. Mike follows their lead on reply and considers the other factors undisputed.

**A. Mike was Not Warned About the Potential for Dismissal.**

Appellees do not dispute Mike was not warned of the potential for dismissal or that the circuit court did not weigh this factor *at all* before dismissing his case. Instead, they ignore Mike entirely and seek to conflate him and his attorney.

GFLP takes the approach of distorting the issues it raised in its Motion to Dismiss to make the conclusory assertion that “[t]his Court need not tell any party or attorney that cannot ‘disregard’ an opposing party’s objections.” GFLP Br. at 37. Regardless, GFLP misapprehends the purpose of considering whether “the plaintiff” was warned of the impropriety of counsel’s actions. It does not stretch the imagination to include that many will not know of every procedural act taken by their attorney, let alone it was improper.

On the other hand, the Gibson Appellees conclude no warning was necessary by assigning Sortland’s alleged “hypocrisy” to his client because he moved for sanctions over 20 years ago on behalf of an *unrelated* client for noncompliance with *Minnesota’s* pre-service requirement. This case has nothing to do with Mike and it is also facially inapplicable not only because it concerned Minnesota law, but also because the subpoenas for medical records *satisfied* the pre-service requirement. Moreover, the pre-service issue with the first set of subpoenas that are not at issue in this appeal were the

product of innocent mistakes, as explained in more detail below. The Gibson Appellees close the argument by citing to *Olson*, 2025 S.D. 34, ¶ 40, for the proposition that Sortland is “presumed to know that dismissal of the case was a potential sanction for his conduct.” Gibsons’ Br. at 27. However, their pin cite is to this Court’s five factor test and there is nothing in *Olson* created any kind of presumption.

#### **B. Lesser Available Sanctions Resolved Appellees’ Objections.**

Appellees do not directly dispute that their objections would be remedied with a lesser sanction. GFLP Br. at 35-37. Indeed, their grievances before the trial court and the Judgment itself are based on Sortland’s decisions and the Court’s concern on Sortland’s continued involvement. Because it is unquestionable that Sortland’s disqualification (who has withdrawn and no longer represents Mike) resolves these issues, Appellees argue this Court is only able to review the circuit court’s *second* failure to adequately weigh lesser available sanctions at the hearing on the Motion for Reconsideration under SDCL 15-6-60(b) because Sortland requested his client not be sanctioned. This position is factually and legally incorrect.

GFLP brought Motion to Dismiss *with* an alternative request for other less severe sanctions. (CR964). At the hearing, Sortland addressed the severity of dismissal, one of the alternative sanctions proposed by GFLP, and suggested using a protective order to guide the parties on the disputed discovery:

All I can say, I apologize, I would expect my opposing counsel to watch out for his part in participating in those rules and watching the requirements of having a hearing scheduled, but I do apologize. I think it would be very harmful to my client to have this case dismissed, it would be very harmful for him to try to find another counsel . . . I think my client has a very good case and I think the Court could issue protective orders regarding the use of this information, I think that would be appropriate. I would like to be able to use everything at trial but if the Court thinks some retractions are necessary we can accomplish that.

(Tr.26:12-23). The issue was certainly before the circuit court when ruling on the Motion to Dismiss. Regardless, Sortland was not required to request he or his client be sanctioned in order to trigger the circuit court's obligation to apply the law to *GFLP's* Motion, which includes consideration of "whether less drastic sanctions can be imposed before dismissal." *Dudley*, 2003 S.D. 84, ¶ 16, 667 N.W.2d at 649; *Matbucha v. Kovarik*, 382 N.W.2d 43, 45 (S.D. 1986) ("Less drastic alternatives should be employed before sanctions are imposed which hinder a party's day in court"). While a trial court has discretion as to the sanction it imposes, it does not have discretion to ignore the standards this Court requires for evaluating them.

#### **C. The Dismissal was Not Based on Mike's Willful or Bad Faith Conduct.**

Once again, it is undisputed that the Judgment is not based on Mike's actions, so it cannot legitimately be claimed he acted willfully or in bad faith. Accordingly, Appellees attempt to justify the circuit court's conclusion that Mike's attorney's action should deprived Mike of his day based on the existence of past litigation. To do so, Appellees insert findings of fact and conclusions of law into the circuit court's ruling concerning res judicata and Mike's alleged "conduct" in past litigation and engage in more personal attacks on him.

The circuit court's consideration of the past litigation was limited to the following statement: "previous litigations with this family and with these exact same people," the latter of which is, in part, false. (Tr.28:2-15); *but see* Gibsons Br. at 28 ("the trial court did not abuse its discretion in considering "Mike's conduct in those two prior lawsuits.""). It made no findings on res judicata and more importantly, Mike's claims are based on

events arising after 2020, so the entire premise of Appellees' position is faulty.<sup>3</sup> Given Appellees' attempts to bootstrap this case to old litigation, it is noteworthy they did not file a dispositive motion on this basis, but instead moved to dismiss for procedural decisions by an attorney.

Next, Appellees turn to distorting the events of past litigation with fever-pitched arguments that attack Mike's character as a proxy for a discrete legal issue related to attorney sanctions. Page 6 of GFLP's brief outlines the tired trope from two decades ago on a one-sided basis by convoluting business dealings and omission of material facts. Mike's goal has been to achieve a fair and equitable distribution of GFLP's assets.

#### **D. The Dismissal was Not Based on Counsel's Willful or Bad Faith Conduct.**

Mike's lack of involvement with issues giving rise to the Judgment should end the Court's analysis of this factor. Nevertheless, for Sortland's part, Appellees largely rely more unsupported assertions about his "knowledge," the pre-service requirement of Rule 45(b), and the false claim Sortland did not admit wrongdoing at the hearing. In the midst of this, Appellees continue to cast aspersions at Mike and apparently, any attorney that has ever represented him.

First, Appellees, GFLP in particular, heavily peppers their briefs with unsupported representations Sortland "knew" the medical records were not discoverable

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<sup>3</sup> Appellees cite to no law endorsing the position to sanction with dismissal based on the sheer existence of past litigation. The Gibson Appellees refer to cases discussing conduct in the *same* litigation, *First General Resources, Co. v. Elton Leather Corp.*, 958 F.2d 204, 206 (8th Cir. 1992) (referencing plaintiff's "pattern of intentional delay"), and misleadingly cite to *Olson* for the proposition that the court may consider "past prejudice and likelihood of future prejudice." They are again simply citing to the Court's five factor test which states in pertinent part, "the degree of actual prejudice to the opposing side or the substantial likelihood of future prejudice in the event of further delay." 2025 S.D. 34, ¶ 40, 24 N.W.2d at 417.

and he "concealed" objections from PLHS. They do not point to any evidence for the proposition because there is none. Every representation Sortland made was that he believed the medical records were, in fact, discoverable. Moreover, Appellees' position *requires* an accurate conclusion of law the records were not discoverable in the first instance. However, it is Appellees who contend discoverability is irrelevant while they feign deep offense Appellant deigns to address it by continuously quoting "no harm, no foul" as though it is a phrase taken from his brief. Moreover, whether Appellees suffered prejudice *is* a factor this Court requires be weighed. However, the circuit court did not consider it, and Appellees do not address it now.

As for the objections, Appellees prefer an unclear record on this because it is undisputed Sortland never personally spoke to PLHS so he could not "concealed" objections as they allege. Sortland's legal assistant answered the phone when PLHS called asking where they should send the records and she told them where, like any other assistant would have. In any case, it is a tall order to suggest Mike's case deserved dismissal because of statements made by his attorney's assistant.

Second, Appellees' briefs as a whole heavily rely on arguments concerning the pre-service requirement, the opportunity to object, and caselaw where sanctions were imposed for non-compliance with the pre-service requirement. These arguments may be dismissed out-of-hand because the record definitively establishes Appellees had advance notice and an opportunity to object to the subpoenas for medical records.<sup>4</sup> Because of

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<sup>4</sup> See *Murphy v. Bd. of Educ.*, 196 F.R.D. 220, 226 (W.D.N.Y. 2000). Ironically, GFLP also cites to *Bellok v. Koths*, 415 N.W.2d 18 (Mich. Ct. App. 1987), which dismissed a case because of a plaintiff's "lengthy, protracted delays and denials of discovery" that frustrated defendant's ability to "discover information vital to a proper defense."

that, Appellees pivot again outside of the scope of the Judgment to the first set of subpoenas. However, Appellees' interjection of this issue is convenient because it underscores the complete lack of willfulness while directly refuting the findings that Sortland refused to acknowledge he did anything wrong.

At the hearing, after the circuit court expressed it felt Sortland had shown a "cavalier disregard of the procedures," he acknowledged the first set of subpoenas unintentionally did not comply with the pre-service requirement and omitted necessary language. (Tr.23:5-18). Sortland explained how the mistakes came about, that they were immediately rectified, and were not repeated. *Id.* There was also evidence of Sortland's internal communications with local counsel in the record. Those communications showed Sortland asked local counsel to review the first set of subpoenas and "if appropriate," "serve them through the file system to opposing counsel." (App.00051-00052). In response, local counsel provided proposed edits and advised that once Sortland had served them, he would "file them and serve opposing counsel in sufficient time so they can file any motion to quash." (App.00053). When local counsel was alerted by another attorney about noncompliance with the pre-service requirement, he took immediate action to rectify the mistake and ensure all parties had an opportunity to object. (App.00056). In his e-mail to Sortland, local counsel acknowledged it was his mistake and explained he had not had the issue come up before. *Id.* While local counsel's advice was wrong, there is nothing to reflect it was given or followed willfully or in bad faith.

Finally, GFLP asserts multiple times that the sanction is retroactively justified by the legal issues Mike identifies in this appeal. While the premise is inherently untrue under standards of review and the reality of the legal issues, it becomes particularly

problematic when GFLP represents to this Court, without citation, that “[a]t no point in time did Plaintiff ever destroy, return, or seal Delores’ wrongfully obtained medical records. To this day, Plaintiff continues to cite Delores’ privileged medical records in their brief.” GFLP Br. at 18. Mike has new counsel on appeal who have neither reviewed nor have possession of Delores’ medical records because they are not in the settled record. More importantly, *each* fact recited in Mike’s opening brief concerning Delores’ health was taken directly from three documents which were solicited and filed into the public record by **GFLP**, not Mike. App. Br. at 8 (“GFLP filed . . . Dr. Reiffenberger’s letter, a letter from Lee Hendricks, PsyD, and LeeAnn’s affidavit, which discussed Delores’ dementia, ischemic cardiomyopathy, and anxiety, amongst other information.”). Appellees throw stones from their glass houses in their diatribes about Mike’s purported failures to take accountability, particularly since it is undisputed the dismissal was not the product of anything he did.<sup>5</sup>

#### **IV. THE CIRCUIT COURT PROPERLY DENIED THE RULE 12(B) MOTIONS TO DISMISS.**

“A motion to dismiss under SDCL 15-6-12(b) tests the legal sufficiency of the pleading, not the facts which support it.” *Guthmiller v. Deloitte & Touche, LLP*, 2005 S.D. 77, 699, ¶ 4, N.W.2d 493, 496. This Court’s standard of review is the same as its review on a motion for summary judgment: “is the pleader entitled to judgment as a matter of law? Thus, all reasonable inferences of fact must be drawn in favor of the non-moving party and [the Court] give[s] no deference to the trial court’s conclusions of law.”

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<sup>5</sup> GFLP’s brief, in particular, is laden with more unsupported grandiose representations and mischaracterizations of fact and law than there is room in this reply to address. For example, it represented Mike did not pay the requisite cost bond to perfect his appeal when a simple call to the circuit court clerk or Mike’s attorneys would confirm otherwise. Appellant urges a careful review of the record.

*Id.* “[T]he court must treat as true all facts properly pled in the complaint and resolve all doubts in favor of the pleader.” *Id.*

Appellees alleged Mike’s claims for breach of fiduciary duty and aiding and abetting the same failed because Greg purportedly cannot owe a fiduciary duty. Now, Appellees urge this Court to adopt a *per se* rule that limited partners never owe fiduciary duties under *Wallop Canyon Ranch, Ltd. Liability Co. v. Goodwyn*. Therein, the Wyoming Supreme Court held limited partners do not owe fiduciary duties because codified law did not impose “explicit statutory duties or responsibilities upon a limited partner.” 351 P.3d 943, 955-56 (Wyo. 2015). This decision, however, is fundamentally inconsistent with decades of this Court’s precedent.

Unlike *Wallop Canyon*, this Court has never required a fiduciary duty to be explicitly set forth in statute and it has repeatedly held it “recognize[s] no ‘invariable rule’ for determining whether a fiduciary relationship exists.” *See, e.g., Ward v. Lange*, 1996 S.D. 113, ¶ 12, 553 N.W.2d 246, 250 (citation omitted). Instead, a fiduciary duty arises when there is “confidence of the one in the other” and a “certain inequality dependence, weakness of age, mental strength, business intelligence, knowledge of the facts involved, or other conditions giving to one advantage over the other.” *Id.*; *accord Glanzer v. St. Joseph Indian Sch.*, 438 N.W.2d 204, 211 (S.D. 1989) (a general partner’s fiduciary duty arises from the “intimacy of the relationship”). This Court should not deviate from its well-settled standard now.

This Court has also prevented other parties from obfuscating liability for breach of fiduciary duty simply because they did not hold the “official” fiduciary title, such as “general partner.” In *Ward v. Lange*, the defendants’ liability arose from leases they arranged with third parties to farmland they owned subject to their uncle’s life estate.

1996 S.D. 113, ¶ 3, 553 N.W.2d at 250. Their uncle entered into these leases by and through his representative, defendants' mother, "who was in her eighties, [and] wanted to protect [the uncle's] income so he would have his caretaking expenses paid." *Id.* at ¶ 13. After defendants collected profits without accounting to their uncle, they argued that only their mother could be liable because they only ever dealt with her, who was his "representative." *Id.* The Court disagreed, finding that defendants had "effectively stepped into [their mother's] shoes, managing the life estate so their uncle would get the managing the life estate so their uncle would get the rent he had been receiving[.]" *Id.* Moreover, defendants' uncle "was dependent on [their mother], and [their mother], quite elderly herself, relied on her sons to help her sustain [their uncle]." *Id.*

Similarly, Greg's fiduciary duty arises because he effectively stepped into the general partner's shoes and participated in the control of GFLP's business and his mother relied upon as her son and notably, her POA. (CR30 at ¶ 76 (alleging that Greg "[took] over management of the GFLP business")). The Amended Complaint alleges Delores, who like the mother in *Ward* was in her eighties, desired an equitable distribution of GFLP's assets and consented to the Disputed Transaction based on a "false belief" it reflected Mike and Greg's mutual agreement. (CR26-27 at ¶¶ 44, 54). And like the *Ward* defendants, the Amended Complaint alleges that Greg, with Ronayne's assistance, controlled the appraisals of GFLP's property and the terms of the Disputed Transaction:

- "[A]ll the information provided to Miller relating to the First and Second and Missing Appraisals came from Greg or agents acting on his behalf, not Delores." (¶ 26).
- "The appraiser who undertook the Neu Appraisal relied on information provided by Greg with respect to . . . the Bi[g] Hill parcel (Tract 1) . . . Again, this appraisal was done for Robert Ronayne and Greg Gibson without Mike's knowledge." (¶ 30),

- “Delores had no role [in] selecting appraisers, the appraisal process, or the determination of what parcels may be sold and at what price. All of these were selected by or with the advice of Attorney Ronayne.” (¶ 45).
- “[Delores] has also indicated that she was unaware of the various Miller Appraisals or the subsequent Neu Appraisal, and, on information and belief, did not receive a copy of either until Mike requested that both be sent to him and to Delores.” (¶ 55).
- “Mike’s offer was never communicated to Delores Gibson, the general partner.” (¶¶ 43, 53).

Because Greg controlled the Disputed Transaction, he was obligated to discharge the same fiduciary duty owed by a general partner. In fact, several other courts have “limited partners who participate in the business of the partnership or act in concert with the general partner are subject to the fiduciary duties of loyalty and care . . . applicable to partners in a general partnership.” *Red River Wings, Inc. v. Hoot, Inc.*, 751 N.W.2d 206, 219 (N.D. 2008) (collecting cases). The “hostile takeover” described by Appellants is not required to create a fiduciary duty. In the context of control, this Court only requires a party to “exercise ‘dominion, control or influence’ over plaintiffs’ affairs.” *Chem-Age Indus., Inc. v. Glover*, 2002 S.D. 122, ¶ 38, 652 N.W.2d 756, 772.

Even so, the Amended Complaint also alleged Greg controlled the general partner through undue influence and isolating her from pertinent facts. (CR26-30 at ¶¶ 43, 46-47, 53, 56, 65-68). Control of the general partner is also sufficient to create a fiduciary duty. *See, e.g., PNC Bank, N.A. v. 2013 Travis Oak Creek GP, LLC*, No. 1:17-CV-560-RP, 2018 WL 6431005 (W.D.Tex. Sept. 28, 2018) (“fiduciary duties existed when limited partners control the general partner in a partnership.”). This result is consistent with this Court’s examination of inequality and dependence between the parties.

To that end, in *Trahan v. Lazar*, the district court for the Southern District of New York determined that allegations that limited partners were “in a position of superior

knowledge and access to information than [plaintiff] with respect to Cornerstone Macro's finances" was sufficient to state a plausible claim for breach of fiduciary duty. 457 F.Supp.3d 323, 347 (S.D.N.Y. 2020). The Amended Complaint alleged Delores was "isolated from all facts" and Mike was forbidden from speaking to Delores about proposals, no one communicated his offer to Delores, and he did not know about the appraisals of the Disputed Transaction until after-the-fact. (CR23-26 at ¶¶ 23, 30, 38, 43). Simply put, there was inequality and dependence between Greg and Mike because Greg controlled the flow of all information not only to the appraisers, but also to Mike and Delores.

The allegations in the Amended Complaint are more than sufficient to satisfy South Dakota's liberal pleading standard for stating a plausible claim for breach of fiduciary duty and aiding and abetting the same. This Court should affirm.

#### CONCLUSION

For the foregoing reasons, Mike respectfully requests this Court: (1) vacate the judgment against him and remand for further proceedings because the sanction of dismissal was not warranted; and (2) affirm the circuit court's denial of the Gibson Appellees' and Ronayne's Motion to Dismiss.

Dated this 5th day of December, 2025.

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**REQUEST FOR ORAL ARGUMENT**

Appellant respectfully requests oral argument before the Court.

/s/ Jonathan A. Heber

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Appellant's Brief does not exceed the word limit set forth in SDCL 15-26A-66, said Brief containing 6,673 words, exclusive of the table of contents, table of authorities, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel.

/s/ Jonathan A. Heber

CERTIFICATE OF SERVICE

I, Jonathan A. Heber, do hereby certify that on this 5th day of December, 2025, I have electronically filed the foregoing with the Clerk of Court using the Odyssey File & Serve system which will send notification of such filing to the following:

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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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No. 31073

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Michael A. Gibson

Appellant,

v.

Greg Gibson, Individually, Joan Gibson, Individually, and Gibson Family Limited Partnership, a South Dakota Limited Partnership; Robert M. Ronayne, and Ronayne Law Office, P.C.

Appellees,

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Appeal from the Circuit Court, Third Circuit  
Codington County, South Dakota

The Honorable Carmen Means  
Circuit Court Judge

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SUPPLEMENTAL APPENDIX

---

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Notice of Appeal filed April 25, 2025

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