

MAY 08 2025

*Shirley A. Johnson Legal*  
Clerk

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

ZHI GANG ZHANG,

Appellant

v.

LING MA

Appellee

**APPELLANT'S  
BRIEF**

#31036  
(06Civ. 24-000534)

On Appeal from the Judgment of the Fifth Judicial Circuit Court, South Dakota

Honorable Richard A. Sommers

Pro Se Litigant, Appellant

Zhi Gang Zhang

2508 Primrose Lane, Aberdeen SD 57401

Attorneys for Appellee:

Mitchell L. Koehn, Attorney for Appellee Ling Ma

25 First Avenue S.W. Watertown SD 57201

The Notice of Appeal was filed on March 26, 2025.

31036

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## **JURISDICTIONAL STATEMENT**

The Honorable Richard A. Sommers issued an Order granting Appellee Ling Ma's motion to dismiss on February 26, 2025.

The Appellant filed his Notice of Appeal on March 26, 2025.

This Court has jurisdiction over this matter pursuant to SDLC § 15-26A-3.

The Appellant hand-delivered \$8,981.98 to the trial court clerk's office on March 26, 2025. The trial court subsequently alleviated the Appellant's obligation, which was agreed upon by the Ma/appellee on March 27, 2025, through a hearing. (Ci,220, Op5:5-24)

## **STATEMENT OF THE ISSUES AND AUTHORITIES**

I. Whether giving equal consideration to motions or assigning equal weight to arguments made by opposing parties would influence the trial court's verdict on personal jurisdiction and the hearing outcome.

### **Trial Court: No Personal Jurisdiction**

The trial court's ruling solely based on the domicile argued by Mr. Koehn, without considering the specific personal jurisdiction outlined in the sanctions motion or the arguments made by Appellant/Zhang. In the motion for sanctions and in his arguments during the hearing, Appellant/Zhang explained that specific personal jurisdiction pertains to how Ma/Appellee is connected to the relevant events in the forum state and provided facts supporting the existence of specific personal jurisdiction.

*Zhi Gang Zhang v. Rasmus* 2019, S.D., 932 N.W.2d 153

SDCL 15-6-11(b). Representations to court

II. Whether the trial court's apparent bias in considering motions and arguments made during the hearing, combined with the disorganized nature of the hearing, prejudiced the pro se appellant's due process rights.

**Trial court: only Ma/Appellee's motion filed by Mr. Koehn was considered**

The trial court considered only the motion filed by Mr. Koehn for Ma during the hearing. It did not take into account the motions submitted by the appellant/Zhang, leading to errors in its decision that could have been avoided with an unbiased and balanced review. The trial court's open biases deprived the appellant/Zhang of his due process rights.

*United States V Sciuto*, 521 F 2d 842, 845 (7th Cir 1996)

III. Whether the fraud on the court has a statute of limitations.

**Trial court: The Statement made in the hearing and the order do not coincide.**

The trial court ruled that the statute of limitations barred the case; however, it also stated that fraud on the court does not have a statute of limitations.

The case was filed due to "fraud on the court," not regular fraud. The appellant/Zhang sought clarification from the trial court by filing a petition for rehearing but the trial court did not respond.

*Bowie v. Maddox*, 667 F. Supp. 2d 276, 278 (D.D.C. 2010)

SDCL15-6-60(b) Relief on ground of –Fraud

SDCL15-2-13(6). for relief on the ground of fraud.

IV. Whether the trial court's use of different standards in judging fraud committed by legal professionals affected the pro se litigant's right to equal protection

**Trial court: Stated he doubted fraud existed based on his personal opinion, not facts.**

The trial court acted sua sponte and expressed personal doubts regarding the existence of fraud in Div09-887, which rendered attorney Oliver's involvement in creating false

documents and making multiple contradictory statements to the court based on those documents, intended to influence the divorce case's outcome, as something other than fraud. The trial court established a different standard for evaluating fraud of legal professionals.

*Sherwood Roberts-Kennewick v. St. Paul*, 322 F.2d 70, (9th Cir. 1963)

*Lall v. Bank of New York*, 5th Circuit 2018-10554 (August 13, 2019)

V. Whether the trial court has subject matter jurisdiction for the filing

Trial court: negatively ruled

The trial court ruled that it lacked subject matter jurisdiction for the case filed, overlooking the fact that alimony matters fall exclusively under the jurisdiction of state courts, not federal courts and state court has general jurisdiction.

Bradley G. Silverman, *Federal Questions and the Domestic-Relations Exception*, 125, Yale L.J. 1364, 1427 (2016)

VI. Whether the trial court erred in dismissing Civ24-534 based on its impression of certain legal professionals' character, rather than reviewing facts provided

Trial court: dismissed Civ24-534, questioning fraud existed in Div09-887

The trial court dismissed Civ24-534, voicing personal doubts about the existence of fraud in Div09-887 based on subjective impressions of the character of the legal professionals involved rather than conducting factual analysis.

*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)

*Ashcroft v. Iqbal*, 556 U.S. 662 (2009)

*Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005)

*Peck v. S. Dakota Penitentiary Employees*, 332 N.W.2d 714, 716 (S.D. 1983).

VII. Whether the trial court erred in dismissing the case with prejudice without an identifiable legal or factual basis for such a punitive disposition

**Trial Court: dismissed Civ24-534 with prejudice without providing any reasoning**

The trial court failed to provide a legal or factual justification for its decision. It did not explain why it elected the punitive disposition while directing the Appellant to return to the divorce court instead of filing a new action to deal with fraud that occurred in Div09-887.

*Jenco v. the United Fire Group* 2003, S.D., 666 N.W.2d 763

VIII. Whether the award of attorney's fees was justified based on an attorney-initiated but unfounded frivolous designation on CIV24-534

**Trial court: Ordered attorney's fees**

The trial court: The order drafted by Mr. Koehn labeled the case filing as frivolous, despite no such finding being made on the record during the hearing. Mr. Koehn did not provide the order draft to the appellant/Zhang for proper review or objection, resulting in procedural irregularities. Appellant/Zhang filed a motion for rehearing to seek clarification, but neither Mr. Koehn nor the trial court responded.

*Stratmeyer v. Engberg* 2002, S.D., 649 N.W.2d 921

*Hensley v. Eckerhart* 1983, U.S., 461 U.S. 424

IX. Whether the trial court's open teaming with other legal professionals to avoid confronting fraud emboldened Mr. Koehn's professional misconduct

**Trial court: showed signs of purposefully evading the case of fraud on the court.**

The trial court exercised its authority to prevent fraud on the court to be adjudicated, even if it meant disregarding fundamental evidential rules and common law principles. The trial court techniques have made the avoidance behavior of other legal professionals more apparent as calculated and somewhat understandable conduct. Are the trial court and legal professionals attempting to suppress and bypass SDCL 16-18-26(1)?

*Am. Legion Homes Ass'n Pos 22 v. Pennington Cnty.* 2018 S.D., 919 N.W. 2d 346

SDCL 16-18-26(1) Misconduct by attorney as misdemeanor

SDCL 15-6-11(b). Representations to court

X. Whether an independent action based on fraud on the court is the most appropriate and feasible remedy under the circumstances

Trial court: rejected the independent filing

The trial court: "I don't know under what theory, Doctor, you are proceeding." SDCL 15-26A-60(4) requires four or fewer cases. Appellant/Zhang listed some, but not all, authorities mentioned in the complaint to address the trial court's aforementioned question. If the trial court had read the complaint, there would be no need to demonstrate that the abundant case laws were quoted in the complaint here.

*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245 (1944)

*Dudley v. Keller*, 521 P 2d 175, 177-78 (Colo. App. 1974)

*In re McCarthy*, 623 N.E.2d 473, 477 (Mass. 1993)

*Demjanjuk v. Petrovsky*, 10 F. 3d 338, 352 (6th Cir. 1993)

*Foxley v. Foxley*, 939 P.2d 455, 459 (Colo. App. 1996)

*Rockdale Mgmt. Co. v. Shawmut Bank, N.A.*, 638 N.E.2d 29,31 (Mass. 1994).

*Aoude v. Mobil Oil Corp.* 892 F.2d 1115,1119 (1st Cir. 1989)

*Kenner v. CIR*, 387 F.2d 689, 691 (7th Cir.1968)

*Lockwood V. Bowles*, 46 F.R.D. 625, 634 (D.D.C.1969)

David R, Hague, *Fraud on the Court and Abusive Discovery*, Nev. L. J., vol 16:707, 727-728 (2016)

SDCL15-6-60(b)(6) "save clause"

## Conclusion

*In re McCarthy*, 623 N.E.2d 473, 477 (Mass. 1993)

SDCL 15-6-11(b). Representations to court

SDCL 16-18-26(2) Misconduct by attorney as misdemeanor

## STATEMENT OF CASE AND FACTS

### Parties in the brief:

Ma: Appellee, Ling Ma,

Zhang: Appellant, Zhi Gang Zhang

Oliver: Harvey Oliver, Appellee attorney in Div09-887

Brown: Jodi Brown, Appellant attorney in Div09-887

Haber: Phillip B. Haber, expert witness for Appellee in Div09-887

Jin: Julie Jin, CPA for Appellee in Div09-887

**CFP Johnson:** Agatha Johnson, CFP, expert witness for Appellee in Div09-887

**Attorney Johnson:** Richard A. Johnson, Appellant attorney 2015-2017

**Rasmus:** Attorney Dan Rasmus, Appellant attorney in Civ13-329

**Koehn:** Mitchell L. Koehn, Appellee Attorney in Civ24-534

**Abbreviations:**

**Ci:** Clerk Index.

**App:** Appendix

**Op:** Original page number on document.

**fn:** footnotes

### **STATEMENT OF CASE**

Civ24-534 was filed pro se by Appellant Zhi Gang Zhang on September 24, 2024, in Fifth Circuit Court, Brown County, South Dakota. Civ24-534 arose from a previous divorce proceeding, Div09-887, adjudicated in the same trial court.

Appellee/Defendant Ling Ma was represented by Attorney Mitchell L. Koehn.

Judge Richard A. Sommers granted the Appellee's motion to dismiss without evaluating the two motions submitted by the Appellant/Zhang, which were scheduled for the same hearing, and disposed of Civ24-534, with the Order entered on February 26, 2025.

Pro se Plaintiff/Appellant Zhang filed a Notice of Appeal on March 26, 2025.

Appellant/Zhang was represented by Jodi Brown, the attorney for the antecedent divorce action. Ma/Appellee, Zhang's ex-wife, was represented by Harvey Oliver.



## **STATEMENTS OF FACTS**

### **A. FACTS RELATED WITH DIV09-887**

Attorney Harvey Oliver was involved and utilized three separate accountings to persuade the trial court in the divorce case Div09-887: (1.) Historical Spending Accounting by Julie Jin; (2.) Time point "Bank Balance Accounting" summarizing all bank balances as of September 30, 2009, and December 31, 2010, by Oliver himself; and (3.) "Ling Profit and Loss" accounting. All three accountings failed to adhere to basic accounting principles, rendering them unusable for fact-finding purposes.

Before preparing the accountings for Appellee Ling Ma, Attorney Oliver issued comprehensive subpoenas for Appellant/Zhang and his family members' financial information records. Appellant/Zhang fully complied, providing all the requested documentation. Additionally, Appellant/Zhang voluntarily submitted Excel spreadsheets outlining the family's income and expenses over a ten-year period, along with supporting hard copies of the bank statements. Despite this transparency, Oliver disregarded Zhang's submissions and insisted on relying solely on his preferred accounting hires to produce purported "evidence. " For reasons unknown to Appellant/Zhang, Attorney Brown did not directly use or mention this ten-year spending information in later proceedings, despite Zhang's requests to use it.

Oliver created the "Bank Balance Accounting" and secured a stipulation from Attorney Brown based on its contents. In doing so, he omitted at least \$101,321.00 (Ci,1, Op15:44) that had been spent during the relevant timeframe of his accounting, thereby distorting the financial facts on purpose (*id.*). This purposefully distorted accounting was

then used to support conclusions that ultimately led to the successful impeachment of the Appellant/Zhang's expert CPA, David Brandt (Ci,1, Op14-15, fn48). By creating and introducing intentionally distorted accountings as "evidence" for the first time at trial—without any prior disclosure or communication with CPA David Brandt—Attorney Oliver compelled Brandt to erroneously concur that there was a \$74,000.00 increase in the Time Point "Bank Balance Accounting" during the relevant accounting period. In reality, had basic accounting principles been properly applied, the records would have reflected a total decrease of \$27,321.00 (*id.*).

The "Ling Profit & Loss" accounting, covering the period from January 1, 2009, to October 1, 2010, was compiled by two different individuals as per Oliver (Ci,1, Op16-17). Despite using the same cut-off dates and underlying raw data, the compilers produced significantly divergent reports (Ci,1, Exhibits 1 and 2, original Bates Stamps 112 and 145). The discrepancies between the two versions include a \$39,092.09 difference in reported Miscellaneous Income and a \$14,189.00 variance in alimony income (*id.*). Additionally, the reports contain further inaccuracies and inconsistencies. For example, a straightforward \$40,000 transfer that occurred during the accounting period is absent from all related entries and correspondence in both versions of the accounts provided (Ci,1, Exhibit 3).

Furthermore, Oliver made bold and unqualified assertions to the court, presenting alleged "facts" that were either unfounded or entirely unsupported by the very accounting documents he claimed served as the basis for his statements (Ci,1, Op18, fn62). These misrepresentations further contributed to a distorted factual record presented to the court by Oliver's team.

CPA Julie Jin compiled the three-year Historical Spending Accounting on behalf of Ma/Appellee. According to Attorney Oliver's billing records and CPA Jin's testimony, Oliver played a significant role in shaping and directing the preparation of this accounting (Ci,1, Op5, fn12). Despite the involvement of two knowledgeable professionals, the sole criterion for inclusion in the Historical Spending Accounting was Ma/Appellee's broad and unverified claims regarding her past expenditures, with minimal supporting documentation—an approach confirmed by CPA Jin in her testimony (Ci,110, Op29-40). Mysteriously, Zhang/Appellant's purely business account, No. 175090353608, was included in Jin's Historical Personal Spending Accounting for Ma/Appellee, while two actual family accounts were excluded. This discrepancy is evident in Oliver's bank account lists for the Appellant/Zhang dated December 31, 2009 (App 16). Therefore, from any professional accounting perspective, CPA Jin's report fails to adhere to fundamental accounting principles and does not accurately serve or reflect its stated purpose, regardless of the viewpoint.

Despite the serious violation of accounting principles, Oliver sought to persuade Attorney Brown to agree to its admission into evidence without verification (Ci,1, Op6, fn13). Furthermore, in his affidavit to the court dated August 23, 2010, Oliver claimed that Jin's accounting, "the foundation for such an exhibit, is without any controversy" (*id.* fn14).

During in-person proceedings, Oliver informed the Court that the sole accounting report prepared by CPA Jin reflected (1) accounting for Ling Ma alone; (2) spending for the entire family (four persons); (3) expenditures on all accounts (note: family accounts are mostly in the states of SD and MN); and (4) accounts located only in Minneapolis; (5)

accounts used exclusively by Ling Ma in Minneapolis (Ci,110, Op 2-12). The trial court failed to reject or penalize these mutually contradictory statements. Even more concerning, Attorney Brown rebutted one of these statements, and after a chamber meeting regarding Oliver's court statement on Jin's accounting, Oliver proceeded to offer yet another false and contradictory statement during the same trial proceeding—again, without consequences (Ci,1, Op7, fn16,19).

Based on CPA Jin's accounting structure, it is evident that Oliver knowingly and willfully presented false information to the court during the proceedings.

In her affidavit (App 19), Ma/Appellee declared her historical spending figures, which had already exceeded the family's total historical spending in the same categories, as shown in Jin's accounting (App 8-15). Ma's inflated 2010 spending, arranged by Oliver through temporary support, also surpassed the family's historical spending, as acknowledged by Jin's testimony (Ci,110 Op26). Additional false declarations made by Ma in the same affidavit were judicially noticed during the trial (*id*, Op42).

By merging the "Ling Profit & Loss" accounting with CPA Jin's records for the same period in 2010, Ma appears to have lived the entire year without spending a dime—yet still generated a surplus of \$10,609.78 (Ci,1, Op17-18). This sharply contrasts with the testimony of CFP Johnson, who indicated that Ma both spent and required approximately \$104,000.00 in 2010, stating that her alimony should reflect this amount during the trial.

Despite the court's acknowledgment of false statements in Ma/Appellee's affidavit (Ci,110, Op42) and Oliver's deliberate contradictions through objections aimed at steering expert witness CFP Johnson's testimony (Ci,110, Op 21-25), along with CFP

Johnson's shifting foundation for her testimony (*id.*), Judge Von Wald nevertheless granted the Appellee's team unfounded alimony request of \$104,000.00— factoring in a reduction based on Ma's 2010 W-2 income. Beyond being inaccurate and irrelevant to actual historical spending, Ma's 2010 spending history was entirely fabricated by Oliver through his temporary support demands (Ci,1, Op3, fn1,2,3). Judge Von Wald's additional rulings and reasoning can be readily rebutted using only the contents of the trial transcripts regarding the causes of the separation and the fault designation. The trial court overlooked that the Ma/appellee's adult abuse caused the separation and misattributed the Ma/appellee's post-separation maneuvers and harassment of the appellant/Zhang—an issue Oliver attempted to suppress during the trial (Ci,110, Op8) — as the fault factor for the separation assigned to the appellant/Zhang by Judge Von Wald.

#### **B. FACTS BETWEEN DIV09-887 AND CIV24-534**

Despite Expert Haber's testimony that Ma/Appellee was incapable of learning and could not work (Ci,110, Op26-28), she is currently employed as a tier-four full-time teacher at a well-known high school in Minneapolis.

The facts obtained through previous discovery demonstrate that Ma/Appellee does not require alimony to cover her normal living expenses. After the divorce, she redirected a substantial and traceable portion of funds from the alimony to her children and sibling. Nevertheless, the trial court refused to allow the Appellant/Zhang to contribute directly to the children's tuition fees (Ci,1, Op 13, fn45) as a means of meeting Ma/Appellee's inflated "alimony needs"(Ci,110, Op44). Through such court alimony arrangements, the children's "support" portion transformed into Ma/Appellee's additional

alimony after the children completed college. The net result of this alimony arrangement contradicts all current alimony principles. She currently owns three houses in the same highly favored residential area of Eden Prairie, Minneapolis.

After the proceeding, the Appellant/Zhang recognized abnormalities with Div09-887 but could not pinpoint exactly what was legally wrong. Due to his upbringing, he was completely naive about the legal system. His debilitating depression did not help the situation either. He sought advice from multiple legal professionals, and there were documented instances of desertion after he raised concerns about fraud involving the legal professionals in Div09-887 (Ci,194, Attachment 1, App 7).

Because several legal professionals dismissed the appellant's concerns about the frauds associated with Div09-887, the appellant continuously suppresses his thoughts on the matter, as he was entirely legally naïve. He feels he must accept that the legal professionals were correct due to their expertise in their specific fields.

Appellant/Zhang followed attorney Johnson's direction to wait until the circumstances change (*id.*) before filing for the alimony modification. However, a review of the record and related calculations for preparing the intended alimony modification astonished the Appellant/Zhang, as a strong case of fraud emerged that contradicted what legal professionals had told him: that the fraud could not be proved. After experiencing repeated betrayals by legal professionals in the past, the Appellant/Zhang chose to file the proceeding pro se.

**C. FACTS RELATED WITH CIV24-534**

Civ24-534 was filed with identified facts constituting fraud upon the court. The timing of the filing reflects that the Appellant/Zhang's legitimate inquiries into the fraud were actively suppressed and obstructed by his attorneys, as evidenced in the Complaint and supporting email correspondence (Ci,194, attachment 1, App 7). The filing was opposed by the Ma/Appellee with a motion to dismiss, followed by a corresponding hearing.

On February 14, 2025, the scheduled two-hour hearing on three motions concluded in under 35 minutes, with deliberation focused solely on the Ma/appellee's motion.

The trial court granted Mr. Koehn's requests and dismissed Civ24-534 with prejudice, providing minimal reference to the complaint and no consideration or elaboration on the appellant/Zhang's two motions.

A rehearing petition (motion) was filed on March 7, citing legal errors made by the trial court regarding personal jurisdiction and factual inaccuracies concerning the number of prior proceedings addressing alimony, which would affect the Ma/Appellee personally. Additionally, it seeks to clarify the contents of the court order drafted by Mr. Koehn, which lacks support from the hearing record (Ci,194). The trial court did not take action on the rehearing filing.

**ARGUMENTS**

# I

## WHETHER GIVING EQUAL CONSIDERATION TO MOTIONS OR ASSIGNING EQUAL WEIGHT TO ARGUMENTS MADE BY OPPOSING PARTIES WOULD INFLUENCE THE TRIAL COURT'S VERDICT ON PERSONAL JURISDICTION AND THE HEARING OUTCOME

**Specific personal jurisdiction pertains to the purposeful availment by the Ma/Appellee of the events occurring in the forum state of South Dakota; this type of jurisdiction is not linked to her domicile.**

Appellant/Zhang's complaint ¶3,4 describes the legal action stemming from incidents related to Div09-887. Ma/Appellee, one of the two parties in the divorce action, has a natural connection to the divorce event decided in South Dakota. ¶20 elaborates on Ma/Appellee's specific involvement in the event of concern (Ci,1, Op1¶3,¶4, Op5¶20). How Mr. Koehn made his arguments while bluntly disregarding facts and the law is a different matter (Ci,61, Op10¶2,18¶5); however, Mr. Koehn did not follow SDCL 15-6-11(b) to conduct any reasonable inquiry as required. A simple search—such as entering “personal jurisdiction in South Dakota case law” into Google—would have revealed *Zhang v. Rasmus*, one of fewer than a dozen long-arm jurisdiction cases in the state. In *Zhang v. Rasmus*, this court found that “the agreement explicitly contemplated legal representation in South Dakota, satisfying the purposeful availment requirement,” even though the attorneys had never physically entered South Dakota. *Zhi Gang Zhang v. Rasmus* 2019, S.D., 932 N.W.2d 153.

From late 2009 through early 2011, Ma personally traveled to South Dakota on multiple occasions to participate in the creation and execution of fraudulent actions, including document forgery and directly contributed to her agent attorney Oliver's "fraud



on the court” before a South Dakota tribunal. These facts establish the specific personal jurisdiction of Ma/appellee in the forum state of South Dakota. Even if Mr. Koehn forgot everything he acquired in college or for the bar exam, what he had briefed in his motion to dismiss on the principle of specific jurisdiction has already forfeited his own argument on the matter (Ci,61, Op5-7). The appellant/Zhang had reminded Mr. Koehn regarding his unfounded arguments in Zhang’s motion for sanctions and reply brief (Ci,96, Op3¶2) (Ci,165, Op2).

The trial court did not consider the motions filed by appellant/Zhang for the same hearing or Zhang’s argument on the subject during the hearing (Ci,176, Op7:15-25, Op9:13-24). The trial court made “plain error” in its no personal jurisdiction ruling by relying solely on Ma/Appellee’s domicile to concur with Mr. Koehn (*id.* Op7:6-14).

The error could have been avoided if the trial court had given equal consideration to all motions submitted and arguments made by opposing parties. It is highly likely that if the trial court had reviewed the Appellant/Zhang’s judicial notice motion (Ci,110) and the facts within it, the hearing would not have concluded in a severely erroneous manner, disposing of a complaint based on the court’s personal opinion of other legal professionals’ characters rather than facts, as detailed in section VI of this appeal.

The order of no personal jurisdiction should be reversed and remanded, and bias should be avoided.

## **II.**

### **WHETHER THE TRIAL COURT’S APPARENT BIAS IN CONSIDERING MOTIONS AND ARGUMENTS MADE DURING THE HEARING, COMBINED**

**WITH THE DISORGANIZED NATURE OF THE HEARING, PREJUDICED  
THE PRO SE APPELLANT'S DUE PROCESS RIGHTS**

**The trial court's one-sided consideration on motions filed, arguments made and  
unstructured hearing caused significant prejudice to the pro se appellant**

The trial court displayed apparent bias from the outset of the hearing. Rather than providing a standard introduction outlining the structure of the proceeding and identifying the documents the trial court reviewed for its first hearing, the court's opening remarks more closely resembled a pre-determined conclusion.

The trial court stated, "I've read the motion to dismiss and the brief, and I'm going to be honest, I'm inclined to grant it. I don't know under what theory, Doctor, you are proceeding." Notably absent from this statement was any reference to the Complaint, which thoroughly detailed the factual allegations and legal theories supporting the Appellant/Zhang's claims. The trial court acknowledged the existence of the two motions filed by the Appellant/Zhang, yet there was no further mention or consideration during the hearing. Moreover, the court's use of judicial authority, combined with facial expressions and gestures—unrecordable methods—dissuaded the Pro Se Appellant/Zhang from raising questions or objections, further undermining the fairness of the proceeding. Furthermore, the trial court directly halted the Appellant/Zhang's objections. The negative impact of the trial court's methodology on the Appellant/Zhang, along with the resulting confusion regarding the structure of the hearing, is evident in the hearing transcript (Ci,176, Op4,5). This significantly impaired the Pro Se Appellant/Zhang's ability to participate effectively in the hearing. When Appellant/Zhang's brain filled with negative messages delivered directly from the trial

court at the start of the hearing, his thinking and processing capabilities deteriorated, as shown by the lack of logical coherence in his statements and the interruptions from the trial court, as evidenced in the transcript (*id.*).

Appellant/Zhang feels he made correct arguments regarding specific jurisdiction during the hearing (Ci,176, Op7:15-25, Op9:22-24), and he wonders why the trial court did not accept these arguments, given that the principle of personal jurisdiction is fundamental knowledge for legal professionals.

Although the trial court declared that the Appellant/Zhang could no longer speak, it still allowed Mr. Koehn to add a request for attorney fees, reflecting an inconsistency in the treatment of opposing parties (Ci,176, Op16-17). This left the Pro Se Appellant/Zhang stunned and uncertain about the purpose of the hearing.

For a motion to dismiss hearing, the purpose is to assess the prima facie of the complaint. When the appellant/Zhang informed the court that the complaint included appropriate citations of relevant laws in an attempt to respond to the trial court's question, the court replied: "Your complaint is not — I don't care what you specify in your complaint, sir. I know what the law is.---" (Ci,176, Op6).

The trial court's open bias in considering the motions, selectively accepting arguments based on the parties rather than on the legal correctness of the arguments, combined with the clear lack of structure in the hearing process, undoubtedly prejudiced the pro se Appellant/Zhang and adversely affected his right to due process. The trial court's final order accurately reflected that only counsel's arguments were considered (App 1).

Section 101 of the complaint states, "It has long been recognized that freedom of the tribunal from bias or prejudice is an essential element of due process." *United States V Sciuto*, 521 F 2d 842, 845 (7th Cir 1996).

The appellant/Zhang, pleads this court to reverse and remand the trial court's orders that were obtained with clear bias and favoritism, ensuring proper proceedings with due process.

### **III. WHETHER THE FRAUD ON THE COURT HAS A STATUTE OF LIMITATIONS**

#### **The trial court's stance on the matter is confusing and unclear**

Mr. Koehn substituted the concept in filing his motion to dismiss; he did not directly address fraud on the court in his motion to dismiss (Ci,61, Op15-17), the legal theory upon which the current case is based and filed with no statute limitation already stated in the complaint (Ci,1, Op2¶6). Like his other arguments, Koehn disregarded the facts and the law stated in the complaint (Ci,1, Op1¶3, Op2¶6, Op27-34).

Appellant/Zhang revealed and objected to such deliberate methods of concept substitution in his motion for sanctions (Ci,96, Op3). However, because the trial court did not consider Appellant/Zhang's filing, it made further avoidable errors in its ruling.

The facts presented in the complaint indicate that the divorce court's acceptance and tolerance, along with Attorney Brown's inactions, allowed Oliver's fraudulent activity to go unpunished. Attorney Brown failed to invoke Rule 60(b) to request a new trial based on that fraud, as she should have. Subsequently, Attorney Rasmus did not address Brown's failure to invoke Rule 60(b) to request a new trial in the corresponding

proceeding. Attorney Johnson avoided addressing the fraud issue during the proceeding to alleviate the ill effects arising from the abnormalities in Div09-887. Both Attorneys Rasmus and Johnson withdrew from their related representation shortly after the Appellant/Zhang inquired about the fraud matter (Ci,194 Attachment 1, App 7). Following their withdrawals, the Appellant had to question the validity of his own suspicions, especially since their departures made him even more unsure about what types or degrees of legal professionals' abnormal activities can be classified or judged as legally actionable fraud, particularly given that he is a layperson in all aspects of the law and his related consultations had been negatively reinforced (Ci,96, Op4). Zhang must believe that these legal professionals know better than he does and that he was mistaken about the fraud issue. The same was stated during the hearing. (Ci,176, Op13:5-14:11) (*id*, Op11:13-13:4). Appellant/Zhang would benefit more from earlier recognition and filing the case sooner rather than facing delays (Ci,87, Op5-6).

If not for the need for retirement and following instruction given by attorney Johnson, the appellant/Zhang would not have timed as such to address the alimony issue again. Appellant/Zhang responded to Mr. Koehn's curiosity about Zhang's process of fully recognizing the fraud in Div09-887, as well as the delays in that recognition process caused by the previous hindrances of various attorneys' actions.

Unless this Court determines that the legal professional's wrongful guidance and suppression of the Appellant/Zhang's concerns about fraud warrant tolling the statute of limitations under SDCL 15-6-60(b), the Appellant/Zhang will be unable to return to the divorce court to seek to vacate the judgment under rule 60(b). The trial court in instance case stated that "any allegations of fraud would be barred by statute of limitations in this

action”(Ci,176, Op15:23-25), which aligns with rule 60(b). Although SDCL 15-2-13(6) may provide for tolling in certain circumstances, its applicability remains uncertain in a case involving fraud on the court, which implicates distinct equitable considerations.

On the other hand, the trial court stated, “Now of course there is no statute of limitations for fraud upon the court in the original action” (Ci,176, Op16:1-2). This language differs from the final order. The appellant/Zhang sought clarification from the trial court in his rehearing filing. It is well established that fraud on the court is not subject to a statute of limitations. Because such fraud undermines the integrity of the judicial process itself, courts retain the inherent authority to address and remedy it at any time, regardless of the passage of time. ““Fraud on the court” is a claim that exists to protect the integrity of the judicial process, and therefore a claim for fraud on the court cannot be time-barred.” *Bowie v. Maddox*, 667 F. Supp. 2d 276, 278 (D.D.C. 2010).

The conclusion that Civ24-534 was barred by the statute of limitations constitutes reversible plain error. Therefore, the order should be reversed and remanded, as Civ24-534 was filed based on fraud on the court, with no statute of limitations.

#### **IV.**

#### **WHETHER THE TRIAL COURT’S USE OF DIFFERENT STANDARDS IN JUDGING FRAUD COMMITTED BY LEGAL PROFESSIONALS AFFECTED THE PRO SE LITIGANTS’ RIGHT TO EQUAL PROTECTION**

**If the standard is the same, Attorney Oliver’s falsification of records and  
contradictory statements to the court based on those records should be classified as  
fraud.**

During the hearing, the Trial Court sua sponte declared that he doubts any attorneys committed fraud in Div09-887. The Ninth Court defined fraud as “a deceitful practice or willful device intended to deprive another of their rights or cause injury.” *Sherwood Roberts-Kennewick v. St. Paul*, 322 F.2d 70, (9th Cir. 1963). The facts outlined in the complaint demonstrate that Attorney Oliver knowingly and intentionally created and utilized false accounting records and made contradictory statements based on those records to unlawfully harm the Appellant/Zhang. Oliver’s intentional deceptive conduct aligns with the legal definition of fraud for any regular citizen.

Attorney Oliver deliberately misled the court during official proceedings, undermining the trial court’s ability to function with judicial integrity and fairness. Accordingly, Oliver’s actions constitute fraud against the tribunal, and anyone under the law thus committed fraud upon the court, as “--fabrication of evidence by a party in which an attorney is implicated, will constitute a fraud upon the court.” *Lall v. Bank of New York*, 5th Circuit 2018-10554 (August 13, 2019). Oliver was a court officer and committed fraud on the court during court proceedings in Div09-887.

Without mentioning any facts revealed in the complaint or in Appellant/Zhang’s judicial notice motion (Ci110), during the hearing, the trial court stated, “In fact, it’s highly doubtful to me there was any fraud involved. I know all these lawyers that are involved. None of these lawyers would have been involved in any type of fraud upon the court in my opinion”. (Ci,176, Op16:5-8)

This statement reflects a personal belief rather than an objective evaluation of the facts alleged in the complaint or submitted in the judicial notice (Ci,110) even though the trial court said, “I read your complaints” (Ci,176, Op7:2). It also raises concerns about

judicial impartiality, as it appears the court relied on familiarity with the attorneys rather than the evidence presented. Such reasoning undermines the principle that all parties—regardless of profession—are held to the same legal standard when allegations of fraud are raised. The trial court's purely subjective determination of no fraud in Div09-887, based on his personal impression of the character of those legal professionals, is improper and directly violates basic evidentiary rules and the equal protection principle.

The Pro Se Appellant/Zhang recognized that the trial court was unwilling to address the issue of fraud on the court and sought any possible avenues to resolve the case on the spot; however, his constitutional rights were at stake. Over the years, the Appellant/Zhang's related rights were systematically violated as a result of the misconduct of legal professionals, including fraud on the court. The trial court's blunt and unconditional protection of legal professionals, rather than upholding the integrity of the legal system to treat all citizens equally, violated the Pro Se Appellant/Zhang's constitutional right to equal protection. Appellant/Zhang wonders how prevalent such unequal protections exist and why victims of legal professionals' misconduct face such daunting obstacles in reclaiming the rights that have been taken from them unlawfully.

Thus, the Appellant/Zhang respectfully requests that this Court reverse and remand the trial court's order of dismissing the properly filed action with prejudice, a filing supported by legitimate grounds, sufficient factual evidence, and applicable law, so the case may proceed to trial. Although justice would be delayed, do not let it be missed.



**V.**  
**WHETHER THE TRIAL COURT HAS SUBJECT MATTER JURISDICTION  
FOR THE FILING**

**The trial court's decision of lacking subject matter jurisdiction contradicts the fact  
that the responsibility for alimony solely rests with the state court**

Mr. Koehn did not raise any questions related to subject matter jurisdiction. The trial court did not elaborate on subject matter jurisdiction during the hearing, except for its decisional statement of no subject matter jurisdiction (Ci,176, Op15:21). During the discussion on personal jurisdiction, the trial court hinted that Civ24-534 could potentially be resolved in federal court due to Ma/Appellee's domicile (Ci,176, Op9:6-8). The Appellant/Zhang must guess that the trial court's conclusion—that it lacked subject matter jurisdiction—is inaccurately based on Ma/Appellee's domicile once again.

Civ24-534 could have been filed in federal court for fraud on the court and for its direct or indirect damages had the trial court not dismissed the case with prejudice. However, as stated in the Appellant/Zhang's petition for rehearing, a federal court generally lacks subject matter jurisdiction over alimony cases due to the *domestic relations exception*, Bradley G. Silverman, *Federal Questions and the Domestic-Relations Exception*, 125, Yale L.J. 1364,1427 (2016). The issue of fraud or fraud on the court falls within the general jurisdiction of state courts for adjudication, especially when the fraud is entangled with an alimony issue.

The absence of a subject matter jurisdiction ruling is a reversible plain error. The decision should be overturned, and the matter remanded for further proceedings.

## **VI.**

### **WHETHER THE TRIAL COURT ERRED IN DISMISSING CIV24-534 BASED ON ITS IMPRESSION OF CERTAIN LEGAL PROFESSIONALS' CHARACTER, RATHER THAN REVIEWING FACTS PROVIDED**

**The standard evaluation of a complaint regarding the motion to dismiss focuses on the adequacy of the alleged facts; the court's personal impressions of the character of other legal professionals should not serve as grounds for dismissing a filed complaint.**

As stated in the complaint and re-stated in the rehearing petition, the current filing arises from Div09-887 but constitutes a separate and independent action. The determination of the truthfulness of the facts alleged in the complaint is a matter for the fact-finder at trial, not for resolution during a hearing for a motion to dismiss, as long as the complaint alleges sufficient facts to state the claim for relief per Prima Facie Standard. The purpose of the independent filing was to ensure that the fact-finders could evaluate the veracity of the evidence through proper due process. However, during the hearing, the trial court remarked: "You think there was false testimony offered to Judge Von Wald. This court was very aware of Judge Von Wald, who was a very good, good judge, and he could smell a rat from 100 yards away if there was somebody trying to mislead him." (Ci,176, Op15:3-6) "In fact, it's highly doubtful to me there was any fraud involved. I know all these lawyers that are involved. None of these lawyers would have been involved in any type of fraud upon the court in my opinion" (*id.* 16:5-8). The trial court's statements reflect a personal impression of the legal professional's character rather than an objective legal analysis of any facts stated in the complaint. By relying on its subjective assessment of another judge's and other legal professionals' character to

evaluate the truthfulness of facts alleged in the complaint, the court violated a fundamental rule of evidence—namely, that character impressions cannot substitute for evidentiary review in determining the validity of factual allegations.

The trial court did not articulate the legal or factual basis for its decision to dismiss Civ24-534, rather than expressing a personal opinion regarding its doubts about the existence of fraud in Div09-887. When evaluating a motion to dismiss, the proper standard is whether the complaint contains sufficient factual matter to state a claim for relief that is plausible on its face. This pleading standard was clearly established in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Allegations of fact in the complaint must be accepted as true and construed in the light most favorable to the plaintiff. *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir.2005).

The trial court's dismissal of Civ24-534 constitutes a reversible "plain error", even if the evaluation relied on real factual assessment, unlike in the present case, which used presumed personal character or opinion as the standard for factual judgment. The dismissal order should be reversed, and the case remanded for further proceedings to protect the integrity of applicable legal standards and fundamental evidential rules.

Moreover, "Generally, a pro se complaint, ---, is held to less stringent standards than formal pleadings drafted by a lawyer, and the allegations of the complaint are taken as true for purposes of a dismissal." *Peck v. S. Dakota Penitentiary Employees*, 332 N.W.2d 714, 716 (S.D. 1983)

**VII**  
**WHETHER THE TRIAL COURT ERRED IN DISMISSING THE CASE WITH**  
**PREJUDICE WITHOUT AN IDENTIFIABLE LEGAL OR FACTUAL BASIS**  
**FOR SUCH A PUNITIVE DISPOSITION**

**The trial court did not specify the basis for dismissing the case with prejudice, nor is there any foundation to support such an extreme measure.**

A motion to modify alimony was filed in 2015, and most of the proceeding was conducted in 2016 with the assistance of Attorney Richard A. Johnson. No subsequent attempts to modify or change the alimony were made until the current civil filing of Civ24-534.

During the hearing, the trial court quickly referred to his computer and mistakenly stated that two previous motions were filed regarding possible alimony changes, instead of acknowledging that only a single motion was filed in 2015. The trial court stated, "That there was a petition for modification of alimony filed by Mr. Rico Johnson in 2015. There was another motion to modify alimony filed in 2016, that I believe Mr. Johnson had withdrawn" (Ci,176, Op14:17-21). The appellant/Zhang submitted a petition for rehearing to rectify the factual error made by the trial court, and the Ma/appellee did not file any opposing document (Ci,194). The trial court acknowledged no change made on the alimony (Ci,176, Op14:22-15:1) by 2015 filing. Attorney Johnson told Appellant/Zhang the 2015 motion was put on hold by the court until his situation changes (Ci,194, attachment 1). When the Appellant/Zhang raised concerns about potential fraud in Div09-887 to Attorney Johnson during 2015 filing, he disagreed regarding the fraud issue, stating in an email that he did not believe it would be successful (Ci,194,

Attachment 1). Attorney Johnson withdrew from further representation of the filing in January 2017 for the alimony modification attempt (*id.*). The fraud issue is a topic that all attorneys consulted or hired by the appellant declined to address, as stated in the complaint. Attorney Johnson refused to consider that potential fraud happened Div09-887 in the 2015 alimony modification filing when the filing was on the divorce proceeding pathway. On the other hand, the current trial court is adamant that the appellant/Zhang return to the original divorce proceeding to resolve the fraud that occurred in Div09-887, rather than filing a new independent action (Ci,176, Op15:21-25).

After the 2015 modification filing, however, the question of fraud has remained unresolved for the Appellant/Zhang, despite his efforts to raise the issue on appropriate and relevant occasions to the proper related legal personnel. His previous attempts to bring the matter to the court's attention were either suppressed or disregarded. Relying on guidance previously provided by Attorney Johnson, the Appellant/Zhang waited in good faith until the circumstances changed when he approached his retirement age. In preparing for the alimony modification filing, Zhang came to the realization that his concerns had been valid all along—it was the legal professionals who erred or deliberately suppressed his rightful concerns. As outlined in the complaint, the Appellant/Zhang from the current preparation on alimony modification realized that Attorney Brown should have pursued a retrial and a request for attorney's fees under Rule 60 (b). Similarly, Attorneys Rasmus and Johnson should have filed the appropriate motions or pleadings to tackle the fraud-related issues that arose in Div09-887, or, at the very least, address Brown's failure to invoke Rule 60(b) concerning the underlying fraud issues.

To add insult to injury, Mr. Koehn said at the hearing, "It's effectively his sixth attempt to modify, change, or otherwise impose some — basically stopping the alimony payments"(Ci,176, Op10:9-11) to the trial court to distort and deliberately misrepresent the facts. According to existing law, lack of personal jurisdiction, lack of subject matter jurisdiction, even in real lacking cases, are not valid grounds for a dismissal with prejudice. For a real statute of limitation case, there is no need for a prejudice assignment, as the case could not be refiled. The trial court only expressed his personal doubt regarding the existence of fraud in Div09-887 during the hearing; this doubt could not serve as a basis to dismiss a case with prejudice.

Suppose the trial court's decision to dismiss with prejudice was based on Mr. Koehn's intentional misrepresentation of facts regarding Appellant/Zhang's prior proceedings. In that case, Mr. Koehn should be held accountable for his knowingly unprofessional misconduct in not being truthful to the trial court while acting as the court officer. By definition, Mr. Koehn, through his conduct, committed fraud on the court, as his unprofessional behavior has already produced detrimental effects on Appellant/Zhang's rightful court filing of Civ24-534. The court records in the Odyssey system clearly refute Mr. Koehn's six attempts to stop the alimony payment claim. In contrast, it is Mr. Koehn who admitted that Appellant/Zhang had been paying all the alimony up-to-date (Ci,176, Op3:13-14). If this is due to the trial court's own mistakes in asserting two previous motions instead of one, in reality, such extreme punitive action is disproportionately severe without a supportive discussion on whether the Appellant/Zhang had previously committed any "improper or unlawful acts" that resulted in prejudice or an undue burden to the Ma/Appellee. "This Court has said many times

that cases should ordinarily be decided on the merits". (quotations omitted) [¶29] *Jenco v. the United Fire Group* 2003, S.D., 666 N.W.2d 763

Regarding the fraud that occurred in Div09-887, there has never been a case filed or adjudicated before. The trial court's decision to dismiss the case with prejudice is excessive, as no factual evaluation took place during the hearing. Furthermore, the hearing for the motion to dismiss is not an appropriate occasion to assess the truth of the alleged facts as per related laws previously briefed.

The plaintiff filed Civ24-534 to seek a one-time opportunity for due process, a constitutional right that was denied as a result of the fraud on the court in Div09-887. The trial court's dismissal of the case with prejudice, without stating or having valid legal justification, is a plain error; this error further compromised the pro se litigant's constitutional rights to due process and to equal protection. The trial court's dismissing order with prejudice should be reversed, and the matter remanded for proper adjudication to safeguard the related legal rights provided by the Constitution.

#### VIII.

#### **WHETHER THE AWARD OF ATTORNEY'S FEES WAS JUSTIFIED BASED ON AN ATTORNEY-INITIATED BUT UNFOUNDED FRIVOLOUS DESIGNATION ON CIV24-534**

**No frivolous designation was found in the hearing transcript.**

Mr. Koehn drafted the court's ruling, characterizing the Appellant/Zhang's complaint as frivolous, but he failed to properly serve the Appellant/Zhang, preventing an appropriate objection as required. Despite the trial court's directive, Mr. Koehn did not

serve his affidavit to the Appellant (Ci,176, Op17:3-5). It was only after the Appellant/Zhang received the signed court order and inquired why the affidavit had not been served (App 5) that Mr. Koehn produced the affidavit and asserted, without legal basis, that the Plaintiff was not entitled to raise a second objection (App 6). In fact, the Appellant/Zhang was never given a chance to voice or submit an objection for the final order draft per se, as Mr. Koehn added the attorney fee request after the trial court announced that the Appellant/Zhang could not speak anymore and that the hearing was over (Ci,176, Op16:14-17:2). Additionally, a review of the hearing transcript confirms that the trial court made no finding regarding the designation of frivolousness during the hearing. As previously described, the trial court's remarks on the instance filing were Judge Sommers' personal opinions based on his perception of other legal professionals' character. There was no factual review of the deficiencies in the complaint that would justify the trial court in designating the filing of Civ24-534 as frivolous. This raises serious concerns about the accuracy and fairness of the language included in the final order, particularly since it appears to have been introduced solely through Mr. Koehn's draft without proper notice or an opportunity for the appellant/Zhang to respond, with Mr. Koehn disregarding the court's order.

In *Stratmeyer v. Engberg*, the court defined a frivolous action as one in which no rational argument based on evidence or law can reasonably support the claim. However, the court also highlighted that the dismissal of a claim does not automatically render it frivolous, *Stratmeyer v. Engberg*, 2002, S.D., 649 N.W.2d 921.

Mr. Koehn has boldly made an outrageous "frivolous" addition to the final order while disregarding the abundant facts and laws mentioned in the complaint.



The "American Rule" governing attorney's fees is a foundational principle of U.S. law. In *Hensley v. Eckerhart*, the Supreme Court clarified that in cases where fee-shifting is authorized, the amount awarded must be "reasonable" and linked to the success achieved in the litigation *Hensley v. Eckerhart* 1983, U.S., 461 U.S. 424 even in the situation where the "American Rule" is appropriately voided.

There was no mention or finding of frivolousness by the trial court during the hearing. Additionally, Mr. Koehn failed to comply with court rules by not allowing the Appellant/Zhang to object, which rendered the final order procedurally defective. Furthermore, Mr. Koehn could not provide any evidential support for the frivolous designation he added to the court order, even when he was given a second opportunity to oppose the rehearing. Therefore, the trial court's order for attorney fees, along with the frivolous designation, should be reversed and remanded.

## **IX.**

### **WHETHER THE TRIAL COURT'S OPEN TEAMING WITH OTHER LEGAL PROFESSIONALS TO AVOID CONFRONTING FRAUD EMBOLDENED MR. KOEHN'S PROFESSIONAL MISCONDUCT**

**Mr. Koehn did not comply with the trial court order and included information in the final order that could not be supported by the hearing transcript**

In this instance, the trial court openly expressed its reluctance to engage with the case during the hearing. Its extreme efforts to dismiss the case, disregarding evidential rules and laws commonly used for complaint evaluations, further demonstrate intentional avoidance rather than a lack of relevant information or knowledge, to evade further

involvement in a case that would expose and address the fraud that previously occurred in the fifth judicial court. The trial court does not need Pro Se Appellant/Zhang to remind it how the specific jurisdiction is defined and which court has subject matter jurisdiction over the alimony issue to prevent the wrongful ruling.

The appellant/Zhang was puzzled by why the aforementioned attorneys, Attorney Brown, Rasmus, and Johnson, along with this trial court, were attempting to suppress and restrict the questioning of potential fraud that occurred in Div09-887 until the appellant/Zhang discovered SDCL 16-18-26(1) while preparing this appeal. SDCL 16-18-26(1) states that misconduct by an attorney is a misdemeanor, which would explain why all the legal professionals were unwilling to counter or reveal the fraud. The involved legal professionals are more concerned with the group's image than with the integrity of the legal system. In his complaint, the appellant/Zhang identified the legal professionals' eagerness to be involved in the mistakes made by their colleagues, but not the fraud issue, without understanding why. The existence of SDCL 16-18-26(1) dawned on him.

Such a permissive environment contributed to the presence and persistence of legal professional misconduct. In addition to committing fraud on the court, Oliver altered and failed to comply with the court's order that he himself changed, as revealed in the complaint (Ci,1, Op22, fn72-75). Similarly, Mr. Koehn has committed comparable misconduct, not only violating SDCL 15-6-11 (b) but also failing to serve his affidavit on the Appellant/Zhang as the trial court explicitly ordered on February 14, 2025 (Ci,176, Op 17:3-5). Mr. Koehn also included a "frivolous" designation regarding the Appellant/Zhang's filing in the final order, a characterization that was not stated or

supported during the hearing. Mr. Koehn's actions, without consideration of the rules, are possibly emboldened by the trial court's openly subjective denial that fraud existed in Div09-887. Although Mr. Koehn did not follow the court order, he threatened the Appellant/Zhang with the consequences of not complying with the court order he drafted and distorted (App 4).

Mr. Koehn submitted only an outdated, generic patterned motion that did not align well with the purpose of opposing the complaint filed in court in this instance. By mechanically using a pre-formed template, Mr. Koehn failed to mention or discuss any relevant laws for or opposing fraud on the court filing, which is the key issue in the current case filing. Mr. Koehn used SDCL 15-2-13, an irrelevant statute to the complaint, as substitution to oppose fraud on the court allegation to claim statute of limitations (Ci,61, Op12-17). As for fact concern, Koehn stated "Not a single paragraph or allegation seeks to assert that Ling Ma, herself, committed fraud on the court through any action of her own" (Ci61, Op10) revealed that Mr. Koehn even did not bother to check the definition of "fraud on the court". Further, Mr. Koehn stated "not a single allegation contained in the Plaintiff's 193-paragraph complaint applies to or even references Ling Ma" contradicted facts mentioned in ¶20 (Ci,1). Besides, in Mr. Koehn's motion, he factually (?deliberately) failed to cognize the "agency principal" appropriately. (Ci,87, Op2) (Ci,96, Op7-10). Without meaningful on-point opposition of fraud on the court in his motion to dismiss, it is highly doubtful that he conducted any research on the subject prior to his filing. For lacking a rational argument based on the evidence or law in support of his claim made in the motion, the frivolous standard that Mr. Koehn briefed

(Ci,61, Op18¶3) in his motion to dismiss aligns more accurately and concisely with his own motion to dismiss.

Additionally, the plaintiff/Zhang requested an itemized statement from Mr. Koehn for his requested attorney fee of \$ 8,981.98, but he refused. With a certificate of service included, Mr. Koehn submitted a total of two pages in response to the appellant/Zhang's two motions. The attorney's fee that Mr. Koehn submitted is disproportionately high compared to the work performed. According to *Am. Legion Homes Ass'n Post 22 v. Pennington Cnty.*, 2018 S. D., 919 N. W. 2 d 346, an itemized statement is required to evaluate the "reasonableness" of the fee to avoid abuse of the system. Yet, as reflected in his email to the appellant/Zhang, Mr. Koehn showed no intention of following the relevant court routine. In his email, Mr. Koehn told Appellant/Zhang that Zhang has no right to make the related request (App 6). Such conduct reflects a troubling double standard from Mr. Koehn regarding adherence to rules and laws while opposing a Pro Se Appellant/litigant. Furthermore, although not required, Mr. Koehn failed to respond to Appellant/Zhang's motion for rehearing pursuant to SDCL 15- 25- 3. Appellant/Zhang's rehearing filing provided Mr. Koehn another opportunity to correct his own mistakes in submitting an unfounded motion to dismiss. The correction should have occurred long ago if Mr. Koehn had followed the ABA's ethical rules. Above all, Mr. Koehn needs to formally explain the discrepancies between the final order he drafted and the hearing transcript. In the Appellant/Zhang's complaint, ¶ 3 and ¶ 4 clearly and accurately state the cause of action and specific personal jurisdiction of the filing, which Mr. Koehn has deliberately overlooked, along with his other similar blatant disregard for facts and laws, such as agency law and

indispensable party principle manifested in his motion to dismiss. Regarding those violations, Appellant/Zhang elaborated in his oppositional motion (Ci,87, Op2-4) and motion for sanctions (Ci,96, Op1-10).

After years of waiting and relying on the guidance provided by his counsel, Attorney Johnson, the Appellant/Zhang now faces an attempt by Mr. Koehn to exploit his own professional misconduct and violation of Rule 11 (b) to deny the Appellant/Zhang's only chance at his constitutional right to due process. This right was previously denied to the Appellant in Div09-887 due to fraud on the court. Mr. Koehn's disregard for rules, facts, and laws is unrelated to the principle of jealousy representations. Mr. Koehn's misconduct increases the likelihood of further compromising justice or fair legal proceedings, which would only exacerbate the original injustice stemming from fraud on the court. Therefore, Appellant/Zhang respectfully requests this court to safeguard and restore his constitutional right to due process, which has been improperly denied for far too long. The Appellant/Zhang further requests that Civ24-534 be remanded to the trial court for proper adjudication on the merits through a fair and impartial trial.

For all the events elaborated above, Appellant/Zhang could neither see the ABA's ethical rules at work nor understand how Rule 11 (b) was observed by the legal professionals in relation to his encounters.

**X.**

**WHETHER AN INDEPENDENT ACTION BASED ON FRAUD ON THE COURT  
IS THE MOST APPROPRIATE AND FEASIBLE REMEDY UNDER THE  
CIRCUMSTANCES**

**The trial court firmly believes that fraud claims must return to divorce court for correction, disregarding the case laws quoted in the complaint.**

Due to the previous inactions of the involved attorneys—Attorney Brown, Attorney Rasmus, and Attorney Johnson—and their suppression of the appellant/Zhang's reasonably raised fraud concerns, the only recourse is the legally permitted independent action for fraud on the court, as established in the landmark case *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245 (1944). Any alternative method for handling the case will encounter obstacles of res judicata or statute of limitations. Therefore, under the current circumstances, filing the independent action is necessary, not optional, to address the specific situation created by Attorney Oliver's fraud on the court and the related delays in properly recognizing the fraud happened to an actionable degree and a defensible case filing. As detailed in the complaint and other filings to the trial court and presented in the hearing, this delay was caused not by the Appellant/Zhang but by the legal professionals involved and their related suppressions on the issue. Such delays should not negatively affect the Appellant/Zhang's filing in the trial court under the relevant law. In *Dudley*, the court determined that the debtor had not been negligent because "[g]ross negligence on the part of counsel resulting in a default judgment is considered excusable neglect on the part of the client, entitling him to have the judgment set aside." *Dudley v. Keller*, 521 P. 2d 175, 177-78 (Colo. App. 1974)

During the hearing, the trial court used a significant portion of the time promoting a concept of two distinct courts, both operating within the same Fifth Judicial Circuit Court (Ci,176, Op8-9) and questioning the validity and feasibility of the independent filing.

“DR. ZHANG: I can actually go to the complaint that specifies a few places why new action can be filed.”

“THE COURT: Your complaint is not — I don't care what you specify in your complaint, sir. I know what the law is. The law is if you are claiming that there is fraud in your divorce action, the place to address that is in the divorce action.”

The trial court's “two courts concept” may have contributed to its erroneous rulings, including misapplications of personal and subject matter jurisdiction, as shown in the transcript. For the feasibility and justifiability of the case filing, Appellant/Zhang made a corresponding brief in his rehearing filing on the issue (Ci194). As a matter of fact, all the related questions had been fully addressed in the complaint if the trial court had read the complaint as announced in the hearing and final order.

If we review the complaint, the reviewer will see ¶58 Court officer, “By eliciting false testimony, introducing in evidence false documents, and failing to correct the record when he had the opportunity to do so, the respondent perpetrated a fraud on a tribunal” *In re McCarthy*, 623 N.E.2d 473, 477 (Mass. 1993). ¶ 69 “[W]hile an attorney ... his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court. And when he departs from that standard in the conduct of a case he perpetrates fraud upon a court.” *Demjanjuk v. Petrovsky*, 10 F. 3d 338, 352 (6th Cir. 1993)

¶ 7 of the complaint: From *Hazel v Hartford*, "...the relief granted has taken several forms: setting aside the judgment to permit a new trial..." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, (supra). ¶ 61 of the complaint: Independent equitable action is available to set aside a judgment if fraud prevented presentation of a claim *Foxley v. Foxley*, 939 P.2d 455, 459 (Colo. App. 1996). ¶88 "All in all, we find it surpassingly difficult to conceive of a more appropriate use of a court's inherent power than to protect the sanctity of the judicial process— to combat those who would dare to practice unmitigated fraud upon the court itself. To deny the existence of such power would, we think, foster the very impotency against which the Hazel-Atlas Court specifically warned." *Aoude v. Mobil Oil Corp.* 892 F.2d 1115,1119 (1st Cir. 1989). ¶92 The remedy for fraud on the court is to vacate the initial judgement obtained through fraud(s) for "that it can be reasoned that a decision produced by fraud on the court is not in essence a decision at all, and never becomes final" *Kenner v. CIR*, 387 F.2d 689, 691 (7th Cir.1968) ¶93. Indeed, one court stated that the facts that had comes to its attention "not only justify the inquiry but impose upon us the duty to make it, even if no party to the original cause should be willing to cooperate, to the end that the records of the court might be purged of fraud, if any should be found to exist". David R, Hague, *Fraud on the Court and Abusive Discovery*, Nev. L. J., vol 16:707, 727-728 (2016) quote *Root Reining Co. V Universal Oil Prods. Co.*, 169 F. 2nd 514, 523 (3d Cir. 1948). ¶ 94 The only instance in which Rule 60(b) allows for the reopening of lawsuits regardless of the passage of time is when there is an allegation of fraud upon the court, for the law favors discovery and correction of corruption of the judicial process even more than it requires an end to lawsuits." *Lockwood V. Bowles*, 46 F.R.D. 625, 634 (D.D.C.1969). The listed



statements from the complaint, as well as other unlisted ones, addressed the trial court's disagreement on the new filing. They also responded to the trial court's question at the start of the hearing regarding the theory upon which the appellant/Zhang based on for filing the case. Thus, the CIV24-534 is properly filed with support of the related case law and statute SDCL15-6-60(b)(6) "save clause". This clause functions independently of the time limitations in Rule 60(b) and allows courts to address instances where the judicial process itself has been compromised by fraud. "---and it does not limit the court's power to entertain an independent action to set aside a judgment for fraud upon the court." In contrary to what had been declared by the trial court: " I don't have any authority to do anything with— nor does a jury—to do anything with Judge Von Wald's decision"(Ci,176, Op3:2-4).

¶ 63. Of the complaint: The judge has broad discretion to determine an appropriate judicial response to fraudulent conduct. This may include dismissing claims or even the entire action if warranted by the fraud. *Rockdale Mgmt. Co. v. Shawmut Bank, N.A.*, 638 N.E.2d 29, 31 (Mass. 1994).

As briefed above, there are more supportive laws cited in the current complaint on file than in ordinary complaints. The confusion caused by the trial court's promotion of the two courts concept and its related orders, potentially stemming from this "two courts" reasoning, such as personal and subject matter jurisdictions, should be reversed and remanded. In particular, the order dismissing the case with prejudice must be overturned.

## CONCLUSION

Legal proceedings are an evolving process; after a reasonable preliminary inquiry, the process could commence. Throughout the process, more facts emerge, and hypotheses are confirmed or discarded based on the identified facts.

Attorney Oliver fabricated documents to support his hypothesis after knowing the underlying facts; this is where he made the wrong choice and he further committed fraud on the court later.

Mr. Koehn showed no sign of a preliminary inquiry into the basic information required by Rule 11(b) and provided no on-point documentation regarding the core subject of the fraud on the court in his motion to dismiss. He appears either too lazy or unwilling to follow the rules and procedures when opposing a Pro Se litigant. Worse yet, in his motion, he deliberately disregards the facts and laws outlined in the complaint to make frivolous arguments. His distortion of the nature of Appellant/Zhang's previous legal proceeding while making his arguments violated the professional standard requirements of honesty to the tribunal. The trial court's selective consideration and acceptance of statements and arguments made during the hearing require adherence to ABA's ethical rules, all the more critical.

Mr. Koehn had been given more than enough time and opportunities to correct his documents submitted to the court, but he failed to do the right thing required by the ABA ethical standards. Complaint ¶58 Court officer, "By eliciting false testimony, introducing in evidence false documents, and failing to correct the record when he had the opportunity to do so, the respondent perpetrated a fraud on a tribunal" *In re McCarthy*, 623 N.E.2d 473, 477 (Mass. 1993)

Mr. Koehn alleged that the Appellant/Zhang has a profound misunderstanding of how the legal system works. Yes, the Appellant/Zhang does not understand why legal professionals can commit fraud or violate Rule 11 (b) without fear of any consequences.

The trial court halted the appellant's record-making process during the hearing, both individually and in a group format, as documented in the transcript. The trial court stated in the hearing, "Sir, you can object and you can appeal my decision to the South Dakota Supreme Court. After that order is signed, you have 30 days to do so".(Ci,176, Op16:18-20).

Although being stopped by the trial court in the process of making the record is a powerful, valid reason for appeal, there is also a "plain error" standard that the appellate court can use. Due to the restriction on word count in the appeal document, Appellant/Zhang will not list the details of the related cases for using the "plain error" standard for appeal review. The trial court simply made plain errors regarding personal jurisdiction, subject matter jurisdiction, setting statute limitations on fraud on the court, and rulings based on the personal impressions of other legal professionals' characters instead of facts to overturn the well-stated complaint, particularly to the extreme of dismissing the case with prejudice without any legal or factual basis to support it.

There is no reason to be here; it is due to Mr. Koehn's frivolous filing that we are involved in this unnecessary appeal process stemming from his blatant disregard for the facts and related laws stated in the complaint. Mr. Koehn should bear more responsibility for not adhering to any attorney's ethical standards by failing to admit and correct his mistakes, follow Rule 11(b), or respond to the appellant's rehearing motion. An

appropriate response from Mr. Koehn to the rehearing would have compelled the trial court to pay closer attention to the Appellant/Zhang's rehearing petition. With the opposing party's proper opposition filing, the rehearing would become mandatory in some jurisdictions, thus providing further reasons for the trial court to take appropriate action on the rehearing motion rather than conducting the current appeal. Overall, the only one who would benefit from this completely avoidable delay caused by a motion to dismiss filed without foundation or factual support would be Mr. Koehn alone; it is likely that Mr. Koehn triggered SDCL 16-18-26(2).

The appellant/Zhang already raised the related question in his rehearing petition: Should the instance case be transferred to other judicial districts to alleviate some difficulties for the trial judge due to previous acquaintances with the relevant legal professionals?

The procedural and substantive legal defects in the trial court's orders have been identified and elaborated upon in this brief. *If left unchanged, the current order from the trial court may result in a permanent and illogical outcome that the appellant/Zhang will face for the rest of his life: his entire social security income after retirement will not even cover the alimony obligation.* Unless this court provides a formal explanation of the trial order that differs from the trial court's original intention, or reverses and remands the case to the trial court for further proceedings, the current trial court order would compound the detrimental effect of the fraud on the court against Appellant/Zhang. The current trial court order can potentially be interpreted by legal professionals like Mr. Koehn to mean that no filing for alimony modification is allowed. Furthermore, the current alimony order made factual designates the children's college educational

expenses as part of Ma/Appellee's alimony (Ma paid the kids' expenses instead of Zhang), which contradicts alimony standards or case law following the children's completion of their college education (See ¶191, ¶192 of the complaint).

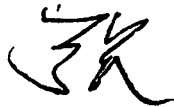
All defective trial court orders in this case should be reversed and remanded to the trial court for proper adjudication on the merits as motion to dismiss hearing could not and should not be the place for merits evaluation. Furthermore, Mr. Koehn, who violated Rule 11(b), should face appropriate sanctions to preserve the integrity of the judicial process and uphold the rule of law. The sanctions against Mr. Koehn or the law firm should cover the additional costs of the current filing and prolonged alimony payments, in addition to previously requested items listed for the sanction filing.

### **ACCEPT ORAL ARGUMENT CHALLENGE**

### **CERTIFICATE OF COMPLIANCE**

Pro Se appellant in compliance with SDCL 15-26A-66 (b)(4) certifies that the font type, size and space is consistent with SDCL 15-26A-66 (a), (b) requirements. The number of words for brief is 9999 in line with 10,000 words limit required by SDCL 15-26A-66 (b)(2).

Appellant



Zhi Gang Zhang

May 8, 2015

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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

ZHI GANG ZHANG,

Appellant

v.

LING MA

Appellee

**CERTIFICATE  
OF SERVICE**

#31036  
(06Civ. 24-000534)

CERTIFICATE OF SERVICE

I, Zhi Gang Zhang, Pro Se APPELLANT, certify that on May 8, 2025, I served a true and correct copy of the forgoing Appellant's Brief and It's Appendix, which were filed with the South Dakota Supreme Court, were served to Appellee/Defendant by E-mailing and by first class mail to:

Mr. Mitchell L. Koehn

E-mail address: mitch@austinlawsd.com

Mailing Address: 25 First Ave SW, Watertown, SD 57201

Pro Se Plaintiff Appellant/Litigant Zhi Gang Zhang

Date this 8th day of May, 2025

2508 Primrose Lane

Aberdeen, SD 57401

(612) 270-2859

E Mail: zhang443@abe.midco.net Plaintiff



IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

ZHI GANG ZHANG,

Appellant

v.

LING MA

Appellee

**APPELLANT'S  
APPENDIX**

#31036  
(06Civ. 24-000534)

---

On Appeal from the Judgment of the Fifth Judicial Circuit Court, South Dakota

Honorable Richard A. Sommers

Pro Se Litigant, Appellant

Zhi Gang Zhang

2508 Primrose Lane, Aberdeen SD 57401

Attorneys for Appellee:

Mitchell L. Koehn, Attorney for Appellee Ling Ma

25 First Avenue S.W. Watertown SD 57201

The Notice of Appeal was filed on March 26, 2025.



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STATE OF SOUTH DAKOTA  
COUNTY OF BROWN SS

IN CIRCUIT COURT  
FIFTH JUDICIAL CIRCUIT

\* \* \* \* \*  
ZHI GANG ZHANG,  
Plaintiff,  
v.  
LING MA,  
Defendant.  
\* \* \* \* \*

06CIV24-000534

ORDER

This matter having come on regularly for hearing before this Court on February 14, 2025, pursuant to the following motions: Defendant's Motion to Dismiss, Plaintiff's Motion for Rule 11(C) Sanctions, and Plaintiff's Motion for Judicial Notice. The Plaintiff appeared personally and pro se. The Defendant appeared by and through her attorney, Mitchell L. Koehn. The Court having heard and considered arguments of counsel, the record and pleadings on file, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Dismiss with prejudice is granted. The Court lacks personal jurisdiction over the Defendant, subject matter jurisdiction over the issues, and the claims sought within Plaintiff's Complaint are barred by the statute of limitations.


Zhi Gang Zhang v. Ling Ma  
06CIV24-000534  
Order  
Page 1 of 2

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint is frivolous. As such, Plaintiff shall reimburse Defendant for her costs, disbursements, and attorneys fees in the amount of \$8,981.98 in accordance with SDCL 15-17-51.

2/26/2025 2:04:36 PM

Attest:  
Rathert, Carissa  
Clerk/Deputy



  
Richard Sommers  
Judge, Circuit Court

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

SS

COUNTY OF BROWN

FIFTH JUDICIAL CIRCUIT

\*\*\*\*\*

ZHI GANG ZHANG,

06CIV24-534

PLAINTIFF,

LING MA;

NOTICE OF ENTRY OF  
ORDER

DEFENDANT.


\*\*\*\*\*

PLEASE TAKE NOTICE that an Order, a true and correct copy of which is attached hereto, was signed by the Court on February 26, 2025, and filed in the office of the Clerk of Courts of Brown County, South Dakota, on February 26, 2025.

Dated this 27 day of February, 2025.

AUSTIN, STRAIT, BENSON,  
THOLE & KOEHN LLP

BY:

  
\_\_\_\_\_  
Mitchell L. Koehn  
Attorneys at Law  
25 1st Ave. SW  
Watertown, SD 57201

CERTIFICATE OF SERVICE

Mitchell L. Koehn, one of the attorneys for the Defendant, certifies that the above Notice of Entry of Order was served on the Plaintiff herein by mailing and emailing a true and correct copy this 27 day of February, 2025, to:

Zhi Gang Zhang, Plaintiff, Pro se  
2508 Primrose Lane  
Aberdeen, SD 57201  
Zhang443@abe.midco.net

  
\_\_\_\_\_  
Mitchell L. Koehn

**AUSTIN, STRAIT, BENSON,  
THOLE & KOEHN LLP**

*A Registered Limited Liability Partnership*  
**ATTORNEYS AT LAW**  
25 FIRST AVENUE S.W.  
WATERTOWN, SOUTH DAKOTA 57201  
TELEPHONE (605) 896-5823  
FAX (605) 433-1303

DAVID A. STRAIT  
KATHAL BENSON  
AMANDA M. TIGLE  
MITCHELL L. KOEHN

REBECCA MORLOCK REEVES  
BROOKLYN M. MILEY

**VIA EMAIL AND FIRST-CLASS MAIL**

February 27, 2025

Zhi Gang Zhang  
2508 Primrose Lane  
Aberdeen, SD 57401  
[Zhang443@abs.midco.net](mailto:Zhang443@abs.midco.net)

RE: Zhi Gang Zhang v. Ling Ma – 06CIV24-000534

Dear Mr. Zhang:

Please find enclosed a copy of the Order that the Judge signed on February 26, 2025. Per the Order of the Court, you are required to repay Ling Ma \$8,981.98 as reimbursement for her attorney's fees. As long as payment is received within 30 days of the date of this letter, we will not proceed with a Motion for Contempt or seek a Judgment against you.

You may either make payment in one of the following ways:

- (1) Make a check payable to Ling Ma, and deliver said check to our office at the address above, or
- (2) Make a check payable to Austin Law Office, and deliver said check to our office at the address above.

Should you have any questions or concerns regarding the foregoing, please let me know.

Very truly yours,

*Mitchell L. Koehn*

Mitchell L. Koehn  
[mitch@austinelawsd.com](mailto:mitch@austinelawsd.com)

MLK/dz  
Enc.

From:	zhang443@aba.midco.net
To:	Danice Zweifel <danice@austinlawsd.com>
CC:	Mitch Koehn <mitch@austinlawsd.com>
Date:	Sun, Mar 2, 2025 03:41 PM
Subject:	Re: Order and Letter

Mr. Koehn:

The court transcript on February, 14, 2025 stated " All right. You can submit your affidavit and fees and serve them upon him, and I'll make a ruling on that and they can be included in the order."

Till today, I have not received your affidavit or detailed billing that can back up your claimed attorney fees.

The Plaintiff should have reviewed all those first as per the judge stated and to make corresponding objection as needed, then judge will make the final verdict or orders.

I do not think you have followed the proper procedure as the judge told you to.

Please respond to this matter as early as possible and provide the related documentation as required by the Judge to avoid further confusion.

Respectfully,

Zhi Gang Zhang

On Thu, Feb 27, 2025 at 01:54 PM, Danice Zweifel <danice@austinlawsd.com> wrote:

Mr. Zhang,

Please see the attached letter from Mitch Koehn along with a signed Order from the Judge. A hard copy has been put in the mail to your address as well.

Thank you.

Danice Zweifel

Office Manager for

Austin, Strait, Benson, Thole & Koehn LLP

25 First Avenue Southwest

Watertown SD 57201

App Page 5

From:	Mitch Koehn <mitch@austinlawsd.com>
To:	"zhang443@abe.midco.net" <zhang443@abe.midco.net>, Danice Zweifel <danice@austinlawsd.com>
Date:	Mon, Mar 3, 2025 08:31 AM
Subject:	RE: Order and Letter
Attachments:	05CIV24-000534_ORDER.pdf, Affidavit of Defendant's Attorney Regarding Attorney's Fees.pdf

Zhi,

Please see attached the Affidavit of attorneys fees that was filed with the court and served upon you. I do not have to provide you with a detailed billing that can "back up [my] claimed attorney fees." All that I am required to do is submit an Affidavit to the Judge regarding attorneys fees, include a statement for his review, and if the judge signs the order awarding the fees, they are to be paid.

You also were not allowed a time for a 2<sup>nd</sup> objection on my attorney fee request. You had the opportunity to object to my attorney fee request at the hearing, and you did not make an argument. The Judge subsequently ruled in our favor.

If you don't think I followed the proper procedure, please feel free to file whatever motion or argument you would like. However, I will be requesting additional attorneys fees inside of any additional motions or challenges.

I simply wanted to provide you with notice that I would give you 30 days to pay the attorneys fees so I do not take out a judgment against you, file a contempt motion, etc., damaging your credit and other headache. I was attempting to be courteous.

Sincerely,



Mitchell L. Koehn  
 Austin, Strait, Benson, Thole & Koehn LLP  
 25 First Avenue Southwest  
 Watertown SD 57201  
 Phone: 605-886-5823  
 Fax: 605-653-1303

e-mail: [mitch@austinlawsd.com](mailto:mitch@austinlawsd.com)

website: [austinlawsd.com](http://austinlawsd.com)

App Page 6

This Electronic Mail (e-mail) contains confidential and privileged information intended only for the use of the individual or entity to which it is sent. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivery to the

From:	Dan Rasmus <drasmus@rasmuslaw.net>
To:	zhang443@abe.midco.net
Date:	Sat, Oct 26, 2013 12:06 PM
Subject:	RE: The fraud case should be easier to win.

I will check my files for the complaint, but believe I gave everything to Ms. Joyce.

A fraud case is very difficult to prove and I do not think there is evidence to support a fraud claim.

I will have stipulation to dismiss the case and to allow us to withdraw from representing you. Can we talk by phone on Monday or Tuesday after I get you the stipulation?

Please Note My New Address and Fax Number  
 Rasmus Law Office, LLC  
 310 Groveland Avenue  
 Minneapolis, MN 55403  
 Tel: 612-746-0321  
 Fax: 612-874-9362

Please Note: The information contained in this message is intended to be confidential and privileged. If you are not the intended recipient, or believe you have received this message in error, please do not read, print, copy, forward or otherwise use the information contained in the message. Please notify the sender you have received this communication in error and delete the message you received.

-----Original Message-----

From: zhang443@abe.midco.net [mailto:zhang443@abe.midco.net]  
 Sent: Saturday, October 26, 2013 11:02 AM  
 To: Dan Rasmus  
 Subject: The fraud case should be easier to win.

Hi Dan,  
 Surprised to see the motion of withdraw that you and Mr. James made and left me in an awkward position without let me know first.

The temporary alimony issue.

- 1, fraud was made in the process the result can not be permitted by law no matter what.
- 2, Judge so called agreement, the attorney client communication is not allowed to be used, it is protected by law.

Thus the loss:

Thus the monthly damage from this Ms. Brown's wrong doing is  $5563-3626=1937$  + 657 Tax (the rate used by defendant team, see Aggie Johnson's calculation). The monthly loss will be \$2594. The total loss from this will depends upon duration, say 730 years.

I had made this very clear regarding the monthly loss issue in previous answering in your questions. this point was not clearly mentioned in the complaint. Thus some argument can be made by the defendant team. Could you give me a copy of the finalized complaints that your handed to the court?

I do have a case meet all the standards. Your are welcome to tell me otherwise.

Thanks,  
 Zhi

Quoting Dan Rasmus <drasmus@rasmuslaw.net>:

Dr. Zhang,

This follows the telephone conversation we just had. It is my understanding that, based on my advice to you and the advice you received from Bill Skolnick and Amy Joyce, you are willing with withdraw the claims made against Ms. Brown and to dismiss that lawsuit.

Please confirm that this is your understanding. There will be some paperwork for you to sign, which I will forward to you once I receive it.

App Page 7



Accounts used for the statement

Acct Name	Owner	Acct Type	Acct #
TCF Bank	Ling Ma	Checking	6439647848
American Express	Ling Ma	Credit card	XXXX-01008
US Bank	Zhi G Zhang & Ling Ma	Checking	1 047 7541 3792
AAA	Zhi G Zhang & Ling Ma	Credit card	4264 2968 0266 6179
US Bank	Zhi G Zhang	Checking	1 750 9035 3608

**Statement Period**

May2009 - November 2009  
January 2007 - November 2009  
January 2007 - October 2009  
January 2007 - Sept. 2009  
None

Accounts used for the statement

Acct Name	Owner	Acct Type	Acct #
TCF Bank	Ling Ma	Checking	6439647848
American Express	Ling Ma	Credit card	XXXX-02006
US Bank	Ling Ma	Credit card	400 000 163 651

EXHIBIT 1 B

Statement Period

December 2009 to August 2010

December 2009 to August 2010

December 2009 to August 2010

EXHIBIT 13

Ling Ma  
6439 Regency Lane  
Eden Prairie, MN 55344

Monthly Expenses For The Years of 2007-2009

Category	2007												Average
	January	February	March	April	May	June	July	August	September	October	November	December	Total 2007 For 2007
AAA membership fees													-
Accountant fees													-
Acupuncture Treatment					439.00	258.00	205.00	64.00		64.00	64.00	64.00	1,158.00
Association fees			660.00	220.00	220.00	220.00	220.00	220.00	220.00	220.00	220.00	220.00	2,420.00
Auto Care *			146.21									30.41	176.62
Auto Insurance (2 cars, 2002 Toyot and 2008 Toyot) *				1,645.30									1,645.30
Bank Fees/Finance charges								9.99					9.99
Cable TV		87.58	45.95	45.95	45.95	45.95	45.95	45.95	45.95	45.95	45.95	45.95	547.08
City Tax													-
Clothing	481.03	(19.88)	706.74	208.10	404.85	28.70	545.05	649.41	381.88	410.39	395.97	356.74	4,849.00
Computer											239.95		239.95
Copy	6.80			25.61	6.50	69.18	39.74	9.31					167.14
Crafts						3.16		42.58			23.70	39.98	109.42
Donations (offering to Church)	50.00	260.00	315.00		20.00						25.00		670.00
Dry Cleaning			46.51										46.51
Entertainment and Chinese channel													-
Eye Care												34.59	34.59
Fitness Club Charges													-
Food/Dining Out	1,157.74	1,095.41	1,381.74	1,146.68	1,171.09	1,266.72	1,192.64	973.99	1,002.09	550.52	880.53	1,131.95	12,983.10
Gas	380.15	129.09	280.15	584.33	274.58	393.31	535.74	449.31	559.13	341.53	436.14	348.07	4,671.63
General Household Use(Sears,Ikea,Wal-mart, Marshal	432.74	319.24	889.14	436.76	303.95	639.63	277.98	1,395.24	313.07	367.97	465.16	(261.45)	5,579.65
Gifts(B-Day/Holiday/ect)			9.53										9.53
Home Improvement/furniture/decoration items	26.66			63.90	17.01		3.06		35.06		39.57	40.33	226.61
Home Insurance					246.80								246.80
Jewelry													-
Legal fees													-
Life Insurance (NYLife)	351.70	351.70	351.70	351.70	351.70	351.70	351.70	351.70	355.70	355.70	355.70	355.70	4,236.40
Medical and Dental Expenses*										194.31		34.59	228.90
Newspapers/books/magazines					4.20	182.81			58.95		35.74		279.70
office supplies			19.19	22.17	47.96		168.43	42.58	56.56	38.90			396.79
Personal Care Items (Hair cut, ect)					53.35								53.35
Phone Expense						176.93	53.31			323.99			554.23
Property tax	191.67	191.67	191.67	191.67	191.67	191.67	191.67	191.67	191.67	191.67	191.67	191.67	2,300.00
School Expenses						13.00	162.41		200.00		95.50	86.00	556.91
Security system													-
Software/Internet *						607.00	19.19	9.31		38.90	37.32	43.14	754.86
Shipping					14.76					1.65	4.60	13.07	34.08
Therapist/Counseling													-
Travel Expenses (Air, Hotel, Taxi, Parking) *	48.50			13.00	5.00	13.50		58.41		1,015.69		16.98	1,171.06
Tutoring Fees													-
Utilities (CTRP, XCEL Energy)	104.26	185.95	259.00	107.87	146.93	162.32	140.08	193.40	188.46	149.13	114.29	108.49	1,838.18
Water/Sewer		53.00			55.00			51.00			54.00		213.00
<b>Total Monthly Living Expenses</b>	<b>3,231.25</b>	<b>2,653.76</b>	<b>4,602.63</b>	<b>5,483.04</b>	<b>4,020.10</b>	<b>4,643.78</b>	<b>4,151.95</b>	<b>4,747.86</b>	<b>3,594.53</b>	<b>4,330.30</b>	<b>3,734.81</b>	<b>2,900.19</b>	<b>48,094.05</b>

App Page 12

\* Note for 2007:

- 1)Auto Insurance for 2 cars, one spare car is for the sons to use when they are home from school.
- 2)Software/Internet in June for \$607 is for Internet meter.

App Page 12

EXHIBIT 4A

Monthly Expenses For The Years of 2007-2008

Category	2008												Total 2008	Avg Mo
	January	February	March	April	May	June	July	August	September	October	November	December		
AAA membership fees														
Accountant fees														
Acupuncture Treatment	84.00			258.00	265.73		660.00						1,235.73	102.98
Association fees	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	2,700.00	225.00
Auto Care *			2,844.73				148.87		428.00	631.88	80.50	75.70	4,205.48	350.46
Auto Insurance (2 cars, 2002 Toyot and 2008 Toyot) *				1,645.30					1,118.20				2,763.50	230.29
Bank Fees/Finance charges	21.14												21.14	1.76
Cable TV	46.95	46.16	46.16	46.15	46.15	46.15	46.16	46.16	46.16	46.16	46.16	46.16	553.87	46.14
City Tax										4.99	4.99	4.99	14.97	1.25
Clothing	900.56	322.93	(165.15)	585.68	417.17	32.05	572.76	513.94	754.78	85.70	630.38	117.78	4,968.56	414.05
Computer														
Copy														
Crafts							26.63						26.63	2.22
Donations (offering to Church)														
Dry Cleaning					71.85	45.54		98.48					213.85	17.82
Entertainment and Chinese channel	27.70						19.90						47.60	3.97
Eye Care						68.34							68.34	5.70
Fitness Club Charges						520.37	180.18	326.88	326.88	160.18	85.47	85.47	1,685.03	138.76
Food/Dining Out	1,643.52	1,054.56	781.70	1,100.50	1,658.60	958.08	1,346.67	1,883.76	1,138.12	1,082.03	1,284.85	2,164.64	16,078.01	1,338.83
Gas	482.59	483.00	403.78	476.43	521.80	442.82	639.97	580.23	507.55	402.52	243.79	161.42	5,345.70	445.48
General Household Use(Sears,Ikea,Wal-mart, Marshal	92.65	454.93	372.87	350.45	287.15	304.89	617.95	793.75	857.37	451.69	631.89	1,141.17	6,368.78	529.73
Gifts(B-Day/Holiday/ect)	41.34	155.99											197.33	16.44
Home Improvement/furniture/decoration items	9.70		11.12	46.18	(7.44)		82.94			29.27	(17.97)	51.31	205.11	17.09
Home Insurance					246.60								246.60	20.55
Jewelry														
Legal fees														
Life Insurance (NYLife)	355.70	355.70	355.70	355.70	355.70	355.70	355.70	355.70	360.50	360.50	360.50	360.50	4,287.60	357.30
Medical and Dental Expenses*		1,505.00	580.00	610.00	1,644.37	166.34	660.00		308.00		2,862.32	753.92	9,087.95	757.33
Newspapers/books/magazines		9.00				54.28	22.18	20.01					105.46	8.79
office supplies	111.96	11.98			29.55	48.25	12.21	57.68	240.45	12.79	27.14	47.02	597.03	49.75
Personal Care Items (Hair cut, ect)									37.41	21.38			58.79	4.90
Phone Expense					23.98					257.82			257.82	21.48
Property tax	208.33	208.33	208.33	208.33	208.33	208.33	208.33	208.33	208.33	208.33	208.33	208.33	2,500.00	208.33
School Expenses			86.00	40.25	4,744.00		38.24	47.00	472.50		172.00	591.50	6,191.49	515.96
Security system														
Software/Internet *	63.01				63.98				6.40	26.71		328.19	488.29	40.62
Shipping	60.10	3.25	55.11	9.17	29.55	46.25	12.21	30.47	240.45		27.14	47.02	590.72	46.73
Therapist/Counseling														
Travel Expenses (Air, Hotel, Taxi, Parking) *			8.00	11.00		433.00	62.27	34.37			50.00	50.00	648.64	54.05
Tutoring Fees			168.00								54.00	162.00	384.00	32.00
Utilities (CTRPT, XCEL Energy)	205.67	208.82	230.14	207.85	162.63	134.50	214.96	50.80	338.67	152.47	97.99	131.04	2,133.54	177.80
Water/Sewer		93.55			52.65		55.95				54.30		256.45	21.37
Total Monthly Living Expenses	4,558.92	5,138.20	6,211.48	6,173.99	11,038.35	4,087.65	6,186.58	6,270.34	7,608.55	4,159.42	7,308.78	6,751.18	74,493.78	6,207.81

\* Note for 2008:

- 1)Auto Care in March for \$2,844, an AC replacement plus labor. In September and October charges for Mud Guard repaired.
- 2)Medical Expense in November was high because there was a Cardiac Stress Test for \$2,488.32.
- 3) School Expenses - In May there was a Summer Camp charge of \$4,744 for the sons.

Monthly Expenses For The Years of 2007-2009

Category	2009											Total 2009	Average For 2009
	January	February	March	April	May	June	July	August	Sept	October	November		
AAA membership fees										258.00		258.00	23.45
Accountant fees											1,227.00	1,227.00	111.55
Acupuncture Treatment			18.88		379.63				880.00			1,098.51	98.89
Association fees	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	238.00	238.00	2,508.00	228.00
Auto Care *			832.29			1,112.88			80.58		222.00	2,347.65	213.41
Auto Insurance (2 cars, 2002 Toyota and 2008 Toyota) *				1,845.30					1,118.20			2,763.50	251.23
Bank Fees/Finance charges				83.83	89.93	12.00	12.00	12.00	283.32	121.40	253.45	867.73	78.88
Cable TV	48.16	48.16	48.16	48.16	48.16	48.16	48.16	88.12	48.17	48.17	48.17	617.78	47.07
City Tax	4.99		8.98	4.99	4.99	4.99	4.99	4.99	4.99	4.99	4.99	54.89	4.99
Clothing	217.46	168.75	649.83	457.80	689.70	635.98	707.10	289.57	104.24	584.38	31.85	4,374.38	387.67
Computer	2,678.80						827.55					3,506.35	318.77
Copy												-	-
Crafts												-	-
Donations (offering to Church)					100.00	50.00	50.00	100.00	100.00	100.00	100.00	600.00	64.56
Dry Cleaning					8.82						109.05	117.87	10.70
Entertainment and Chinese channel									8.58			8.58	0.78
Eye Care												-	-
Fitness Club Charges	85.47	85.47	85.47	83.83	85.47	222.04	160.75	160.75	160.75	328.87	13.98	1,467.83	133.42
Food/Dining Out	2,216.79	1,091.48	1,498.47	1,828.50	817.72	2,039.51	1,938.86	1,234.18	502.44	1,080.54	119.33	14,081.78	1,278.34
Gas	121.31	157.03	267.95	125.47	183.73	180.39	78.48	161.19	185.18	213.78	81.18	1,728.86	158.88
General Household Use (Sears, Ikea, Wal-mart, Marshall)	355.84	(284.95)	381.87	572.80	195.52	944.83	842.48	2,627.81	320.92	312.14	11.03	6,988.87	541.82
Gifts (B-Day/Holiday/etc)					57.81	574.18		7.25				739.02	67.18
Home Improvement/furniture/decoration items	50.52	199.48	4.78		542.85	28.71	758.00	2,135.94	82.39	58.58	34.67	3,801.82	384.72
Home Insurance					248.60							248.60	22.42
Jewelry					303.25							303.25	27.67
Legal fees								3,000.00	2,500.00	2,500.00	6,000.00	13,000.00	1,181.82
Life Insurance (NYLife)	360.50	360.50	360.50	360.50	360.50	360.50	360.50	360.50	366.90	368.80	368.90	3,884.70	362.25
Medical and Dental Expenses *	145.86	783.00	5,763.09	1,135.68	212.24	1,208.52	1,474.92	3,555.72	872.40	743.00	143.00	16,037.43	1,467.95
Newspapers/books/magazines	449.25		32.02				40.40	58.59		100.30	104.30	784.88	71.35
office supplies	29.59	28.75		52.89	2.68	16.81		98.83	27.72	45.82		302.87	27.53
Personal Care Items (Hair cut, etc)	23.24		17.10			8.41		39.00	119.50		166.31	380.56	32.78
Phone Expense			184.37	489.88	652.98		584.03		16.80	258.00	317.88	2,903.72	227.61
Property tax	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	2,475.00	225.00
School Expenses	113.50	115.00										228.50	20.77
Security system										108.20	50.90	157.10	14.28
Software/Internet *		42.75			2.68	28.71	535.48			328.43	19.40	865.35	88.55
Shipping	14.44	28.75		52.89		18.81			27.72	45.82	7.47	193.90	17.83
Therapist/Counseling			170.00	135.00	135.00	135.00	135.00	135.00	135.00	135.00	135.00	1,260.00	113.84
Travel Expenses (Air, Hotel, Taxi, Parking) *		14.00	684.95	1,287.00	893.35	684.69	1,408.80	7,003.28	699.65	1,374.86	921.87	14,732.38	1,339.30
Tutoring Fees		9.00										9.00	0.82
Utilities (CTRP, XCEL, Energy)	210.38	380.98	98.28	375.00	203.47	68.32	143.08	-	278.85	197.83	-	1,943.17	178.85
Water/Sewer		45.55			57.60		53.75			39.50		198.30	17.85
<b>Total Monthly Living Expenses</b>	<b>7,774.20</b>	<b>3,719.68</b>	<b>11,629.88</b>	<b>8,864.70</b>	<b>6,382.14</b>	<b>8,913.82</b>	<b>10,110.21</b>	<b>21,470.88</b>	<b>9,161.28</b>	<b>9,774.51</b>	<b>9,837.48</b>	<b>107,728.39</b>	<b>8,793.49</b>

\* Note for 2009:

- 1) Auto Care in March for \$932.29 is for front bumper replacement. In June for \$1,112.88 is for Fender replacement.
- 2) Computer - Purchased a new computer.
- 3) Medical and Dental expenses in 2009 is higher due to stress overall. A CT of head was done in March and the charge was \$4,984 in August, a dental work for Crown-porcelain was done for \$3,555.72.
- 4) Home Improvement in August - there was a charge of \$2,170 for floor replacement.
- 5) Travel Expenses - Field trips to Chicago to visit school in April and July. She went on a vacation to Orlando and a cruise trip in August. Visited her sons in Chicago in October.

Ling Ma  
5439 Regency Lane  
Eden Prairie, MN 55344

Monthly Expenses from December 2009-August 2010

Category	2010											Average
	December	Total 2009	January	February	March	April	May	June	July	August	Total 2010	For 2010
Association fees	236.00	236.00	236.00	236.00	236.00	236.00	236.00	236.00	236.00	236.00	1,888.00	238.00
Accountant Fees	1,227.00					1,000.00		1,000.00		1,474.00	3,474.00	434.25
Auto Care			916.89		80.56			882.84	267.86	102.12	2,060.07	256.28
Auto Insurance (2 cars, 2002 Toyota and 2008 Toyota)									183.50		183.50	22.94
Bank Fees/Finance charges	79.13	79.13	31.40	80.74	(48.50)	54.00	19.00	4.00	15.00	15.00	170.64	21.33
Cable TV	97.89	97.89	71.58	48.31	99.31	73.76	73.76	73.76	48.31		488.79	61.10
Car Registration fees									413.00		413.00	51.63
City Tax												
Clothing	1,209.74	1,209.74	435.44	200.13	343.42	156.97	385.75	179.10	253.13	64.48	2,018.43	252.30
Computer												
Copy												
Crafts												
Donations (offering to Church)	100.00	100.00	100.00	200.00		100.00		200.00	100.00	100.00	800.00	100.00
Dry Cleaning												
Electronic Supplies	34.32	34.32		1,629.17	33.28	9.70	111.58		266.70		2,060.43	256.30
Entertainment and Chinese channel			153.55			40.92		5.70			200.17	25.02
Eye Care												
Fitness Club Charges	176.84	176.84	86.77	86.77	86.77	86.77	73.06	86.77	86.77	86.77	690.45	85.06
Food/Dining Out	878.40	878.40	1,056.20	411.91	1,160.15	884.75	133.54	652.61	1,018.54	1,072.07	6,389.77	798.72
Gas	313.02	313.02	179.69	197.38	198.63	126.54	172.20	149.61	280.91	184.42	1,459.58	183.70
General Household Use(Sears,Ikea,Wal-mart, Marshalls,Kmart)	580.00	680.00	194.13	277.39	867.59	293.28	249.50	159.85	55.87	189.88	2,267.47	283.43
Gifts(B-Day/Holiday/ect)	32.17	32.17										
Home Improvement/furniture/decoration items			185.29		580.00						765.29	95.66
Home Insurance	15.29	15.29	15.29	15.29	15.29	15.29	15.29	15.29	15.29	15.29	122.32	15.29
Jewelry												
Legal fees			2,459.10	1,529.80		2,559.34		1,081.03	1,360.00		8,989.27	1,123.66
Life Insurance (NYLife)	366.90	366.90	366.90	366.90	366.90	366.90	366.90	366.90	366.90	366.90	2,935.20	366.90
Medical and Dental Expenses	1,361.15	1,361.15		200.00	1,391.30	584.22	26.00	905.00	115.00	738.74	3,980.26	495.03
Newspapers/books/magazines	46.29	46.29	(46.14)	149.96				14.32	45.00		163.14	20.39
office supplies	14.99	14.99		14.99							14.99	1.87
Personal Care Items (Hair cut, ect)	11.00	11.00				86.99	16.00				102.99	12.87
Phone Expense	251.45	251.45	13.93	154.49	114.46	95.38	175.31		167.46	16.80	737.93	92.23
Property tax	193.77	193.77	200.69	200.69	200.69	200.69	200.69	200.69	200.69	200.69	1,605.52	200.69
School Expenses	2,566.86	2,566.86				458.00	100.00	923.75	100.00	1,129.89	2,709.44	338.68
Security system	50.90	50.90	25.44	38.17	38.17	38.17	38.17	38.17	38.17	38.17	282.63	36.58
Shipping			4.27			28.78					33.05	4.13
Sons' School Use									1,650.00	400.00	2,050.00	256.25
Therapist/Counseling	124.00	124.00					675.00				675.00	84.38
Travel Expenses (Air, Hotel, Taxi, Parking)	641.00	641.00	48.00	870.72	95.88				19.90	238.70	1,271.20	158.90
Utilities (CTRPT, XCEL Energy)	103.00	103.00	90.56	192.18	179.08	141.25	74.24	81.95	112.26	148.55	1,018.09	127.26
Water/Sewer												
<b>Total Monthly Living Expenses</b>	<b>10,711.11</b>	<b>10,711.11</b>	<b>6,822.80</b>	<b>7,100.99</b>	<b>6,038.98</b>	<b>7,635.70</b>	<b>3,141.99</b>	<b>7,057.64</b>	<b>7,416.26</b>	<b>6,776.28</b>	<b>51,990.52</b>	<b>6,498.82</b>

EXHIBIT 4D



**Richards & Oliver**  
**Attorneys at Law**

Carlyle E. Richards, P.C.  
Harvey A. Oliver Prof. L.L.C. •

415 South Main St.  
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• Also Licensed in  
North Dakota  
Minnesota

December 31, 2009

Ms. Jodi Brown  
Brown Law Firm  
PO Box 118  
Aberdeen, SD 57402-0118

RE: Zhang v. Ma

Dear Jodi:

I am in the process of reviewing the records that you have provided me to date and the records we have yet to obtain. I have attached a list of financial accounts. Please verify to me in writing that these are the only accounts which this couple has.

With regard to the AAA credit card. Since your client removed my client as an authorized person from the account, we are unable to retrieve the monthly statements, and they will not honor a release signed by him. Therefore, please obtain for our use the monthly credit card statements for 2007, 2008, and 2009.

With regard to the Bank of America credit card, we are unable to retrieve the monthly statements. Therefore, please obtain for our use the monthly credit card statements for 2007, 2008, and 2009.

With regard to the Wells Fargo checking account number 1865360240, we are missing all of the statements. Therefore, please obtain for our use the monthly statements with the copies of the checks attached to the statements for 2007, 2008, and 2009.

With regard to the Wells Fargo savings account number 2476643107, we are missing all of the statements. Please request of Wells Fargo Bank to provide us with the detailed statements for 2007, 2008, and 2009.

With regard to the Plains Commerce checking account number 100050120, we are missing 11 statements. Please obtain for our use these monthly statements with copies of the checks attached to the statements for the following months:

September 26, 2008 – October 26, 2008

January 26, 2009 – June 25, 2009

September 28, 2009 – December 31, 2009

With regard to the Morgan Stanley account number 332-065796-301, please provide us with a copy of the Summary of Accounts for the following months:

April 2007

February 2008

September 2008

October 2008

November 2008

February 2009

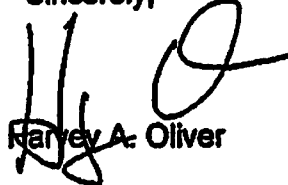
August – December 2009

With regard to the Morgan Stanley Choice Retirement account number 774-010876-002, please provide us with the Summary of Accounts for 2007, 2008, and 2009.

With regard to the Morgan Stanley Choice Retirement account number 473-034776-294, please provide us with the Summary of Accounts for 2007, 2008, and 2009.

With regard to the Morgan Stanley/Smith Barney Retirement account number 319-065684-072, please provide us with the Summary of Accounts for 2007, 2008, and 2009.

Sincerely,



Harvey A. Oliver

HAO/plb

Enclosure

Cc: Ling Ma ✓

**LIST OF FINANCIAL ACCOUNTS  
ZHI ZHANG/LING MA**

AAA Credit Card (Zhi Zhang) (cancelled 09/2009)	4264-2968-0231-8359
Bank of America Credit Card (Zhi G. Zhang)	5490-9905-7123-1529
US Bank (Zhi Zhang, MD, Prof. LLC) Visa Credit Card Acct.	4798-5312-0454-9986

**Investment Center:**

American Funds (Joint):	00069259042
American Funds (Chong—Educational Plan):	00074036566
American Funds (Shuang—Educational Plan):	00074036620
American Funds (IRA Jackson National, Dr. Zhang)	1006099293
American Funds (IRA Simple, Dr. Zhang)	00074607158
American Funds (Zhi Zhang MD Prof. LLC)	00001889465

Morgan Stanley Custom Portfolio/Retirement Account:	332-065796-301
Morgan Stanley Choice Retirement:	774-010876-002
Morgan Stanley Choice Retirement:	473-034776-294
Morgan Stanley/Smith Barney Retirement Account:	319-065684-072

Plains Commerce Bank (Zhi Zhang/Ling Ma)	100050120
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US Bank (Zhi G. Zhang/Ling Ma)	1-047-7541-3792
US Bank (Zhi Zhang, MD, Prof.LLC)	1-750-9035-3608

Wells Fargo PMA Package (Zhi Zhang) PMA and Checking	1865360240
Wells Fargo PMA Package (Zhi Zhang) Savings	2476643107

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF BROWN

FIFTH JUDICIAL CIRCUIT

ZHI GANG ZHANG,

Plaintiff,

DIV. 09-887

vs.

**AFFIDAVIT IN SUPPORT OF  
MOTION FOR INTERIM SUPPORT**

LING MA,

Defendant.

STATE OF MINNESOTA )  
 )SS.  
COUNTY OF HENNEPIN )

Ling Ma, being first duly sworn upon oath states as follows:

1. I am competent to testify to the matters stated herein which are based upon my own information and belief.
2. I am the defendant in the above-entitled action. The plaintiff and I were married on March 10, 1986 and have been married for more than 23 years. Shortly after we came to the United States, the plaintiff commenced his medical residency and thereafter received his physician's license. The plaintiff has been the primary earner in our family throughout our marriage except for the period of time when he was studying medicine in China. During this period of his medical study, I worked and supported the plaintiff.
3. I am 47 years of age and am currently employed on a part-time basis and teach Chinese to high school students. My income varies considerably from teaching because I receive payment on a per student basis rather than on a salary basis. The number of students taking Chinese varies from semester to semester and so does my income. Throughout our 23 year marriage, I have not been employed outside the home on a full time basis and we have never been dependent on my income, except for the period when the plaintiff was enrolled in medical school in China.
4. I am separated from the plaintiff and I currently reside in a town home located at 6439 Regency Lane, Eden Prairie, MN 55344. We bought the Eden Prairie town home in December 2007. This home has served as the primary residence for me and our twin sons since we purchased it. The plaintiff and I discussed and agreed upon my moving to Minnesota with our boys so that they would have access to college preparatory and enriched courses in their junior and senior high

educations. The boys and I moved to Minnesota in September 2005 and lived in an apartment in Eden Prairie until we purchased the town home.

Our boys graduated from high school this past June 2009. They continued to reside with me until August 2009, when they left Minnesota to live in Chicago, Illinois. They will turn 18 on November 26.

5. Our 17 year old sons are very gifted children and are now enrolled as freshman at DePaul University in Chicago, Illinois. I have visited them in Chicago often to provide them with emotional and financial support. I have also helped pay for incidental expenses they have incurred since leaving my home.
6. In addition to the foregoing college expenses, I incur and will necessarily continue to incur until this divorce is finalized the following customary monthly and routine expenses:

a. Utilities	\$270.00
b. Cable TV	\$110.00
c. Groceries, Eating at Work, Eating Out	\$1,000.00
d. Gas and oil/lube/license	\$250.00
e. Vehicle Repairs/Mtn	\$150.00
f. Cell Phone Expense	\$190.00
g. Clothing and Shoes	\$600.00
h. Medical and Dental	\$550.00 (annual deductible is \$5,800)
i. Therapist/Counseling	\$135.00 (as monthly deductible)
j. Laundry and Dry Cleaning	\$70.00
k. Recreation and Leisure	\$100.00
l. Other (Prescription Drug)	\$62.00 # 500.
m. Personal Care Items	\$400.00
n. Fitness Club Membership	\$161.00
o. Visiting Sons in Chicago	\$1,760.00
Hotel/Air/Food/Taxi 2 x month	
p. Entertainment and Chinese channel	\$100.00
q. Gifts (B-Day/holiday/etc)	\$250.00
r. Donations (offering to Church)	\$150.00
s. Accupuncture treatment	\$282.00
t. Life insurance (NYLife)	\$390.00
u. Newspapers/books/magazines	\$80.00
v. Home Improvement Items	\$200.00
w. Furniture and decorations	\$200.00
y. International travel	\$300.00

Total Expenses \$7,760.00

300 more

Amu

In addition to the foregoing expenses, there is a monthly installment (mortgage) payment due for my town home residence of approximately \$1,400.00 and association dues of \$225.00 per month. The plaintiff has always remitted the regular monthly installment payments for my housing. Also, the plaintiff has always remitted all payments for our car insurance coverage. I am requesting that he be ordered to continue to make these payments in the future during the pendency of this proceeding. Alternatively, I request that he be ordered to remit additional monies to me each month so that I am able to remit payment for the mortgage, association dues and car insurance.

I have been seeing a therapist once a week. This therapy is covered by our current health insurance but there is a monthly deductible of \$135.00. I would like to continue seeing this therapist.

I have routinely traveled to see my children twice a month since they left Minnesota. I would like to continue seeing the children in Chicago twice a month. They are currently 17 years of age and are in need of my emotional support.

7. After deducting my taxes and other payroll expenses, my monthly take-home income from my part time employment is approximately \$860.00.
8. My husband, the plaintiff, is employed as a medical doctor in the Emergency Room Department of Avera St. Luke's Hospital and earns approximately \$300,000.00 per year. He and another doctor co-manage the emergency room department and each of them receives an annual bonus based on the profitability of the ER department.
9. In addition to the foregoing monthly expenses, as a family we incurred additional expenses such as mortgage payments for our two homes, car payments and credit card payments. For example, in 2008 we purchased a new Toyota RAV 4 with cash for me to use with the boys. Prior to this, we purchased a Toyota Highlander new with cash in 2003.

It is also necessary during the pendency of these proceedings that my health insurance remain in full force. My health insurance is currently provided through my husband's employment. My husband has paid all of these expenses in the past, including the annual deductible. We have met our 2009 annual deductible based on treatment I have received. I have included the annual deductible in my expenses because I will likely continue to have deductible expenses related to my treatment for high blood pressure. I am requesting that the plaintiff be ordered to continue to provide my health insurance coverage without any lapse in coverage during this proceeding.

10. During the pendency of these proceedings I am requesting that the plaintiff be responsible for all outstanding monthly payments incurred by us; that he be required to keep those payments current including credit card payments, health insurance, mortgage payments and other applicable insurance up to date; and, in

addition thereto, that he be required to pay to me the sum of \$8,000.00 per month as interim support until entry of final judgment and decree of divorce.

The plaintiff had been regularly paying the American Express account in my name and all charges we jointly made on a AAA VISA card that issued cards to both plaintiff and me. In addition, plaintiff would regularly arrange to deposit monies into a joint account in our names at US Bank that our boys would use by their check cards and that we would use for paying expenses.

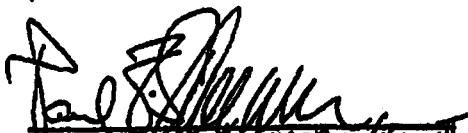

The plaintiff has not deposited monies into the joint US Bank account since August 2009 and there is now about a \$2,500 debt against the line of credit. I will need to service this debt unless the plaintiff is ordered to satisfy this debt. Because the plaintiff has failed to pay off the American Express account, there is now a balance of approximately \$3,100.00. I am requesting that the plaintiff be ordered to satisfy the US Bank line of credit and the American Express account balance. Payment for any further use of these accounts will be the responsibility of the person who uses the account.

11. I also request an order of the court allowing that I be permitted to withdraw, liquidate or otherwise dissipate marital assets to the extent of \$7,500.00 for payment of interim attorney's fees or in the alternative that my spouse be directed to pay to me as interim attorney's fees necessary to prosecute this matter the sum of \$7,500.00. The plaintiff has always received substantial income from his employment and he has kept our personal finances and his investments from me and I will require monies to conduct discovery into the investments and the manner in which he has spent monies over the past 4 years.

Dated this 15<sup>th</sup> day of October, 2009.

  
\_\_\_\_\_  
Ling Ma

Subscribed and sworn to before me this 15<sup>th</sup> day of October, 2009.

  
\_\_\_\_\_  
Notary Public, MINNESOTA  
My Commission Expires 1-31-2010  


## **Statutes**

### **15-6-11(b). Representations to court.**

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

### **16-18-26. (1)(2) Misconduct by attorney as misdemeanor.**

Every attorney at law who:

- (1) Practices any deceit or collusion, or consents to the same with intent to deceive the court or any party;



- (2) Intentionally delays his client's suit with a view to his own gain;

15-2-13(6). Contract obligation or liability--Statutory liability--Trespass--Personal property--  
Injury to noncontract rights--Fraud--Setting aside corporate instrument.

Except where, in special cases, a different limitation is prescribed by statute, the following civil actions other than for the recovery of real property can be commenced only within six years after the cause of action shall have accrued:

- (6) An action for relief on the ground of fraud, in cases which heretofore were solely cognizable by the court of chancery;

15-6-60(b). Relief on ground of mistake--Inadvertence--Excusable neglect--Newly discovered evidence--Fraud.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (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.**

**The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. Section 15-6-60 does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided by statute or to set aside a judgment for fraud upon the court.**

**15-26A-66. Length of briefs.**

**(a) Monospaced Typeface. Appellant and appellee briefs in monospaced typeface shall not exceed forty pages. A reply brief and amicus curiae brief shall not exceed twenty pages. A supplemental brief shall not exceed ten pages. Monospaced type shall be no more nor no less than ten characters per inch (10 cpi).**

**(b) Proportionally Spaced Typeface. Appellant and appellee briefs in proportionally spaced typeface shall not exceed thirty-two pages. A reply brief and amicus curiae brief shall not exceed sixteen pages. A supplemental brief shall not exceed five pages. Nonetheless, briefs may exceed these page limitations if they otherwise comply with the type volume limitations in § 15-26A-66(b)(2). A proportionally spaced typeface must include serifs, but sans serif type may be used in headings and captions. A proportionally spaced typeface must be 12-point or larger, in both body text and footnotes.**

**(1) Type Style. Briefs must be set in a plain, roman style, although italics may be used for emphasis. Case names must be italicized or underlined. Boldface can only be used for case captions, section names, and argument headings. The use of all-capitals text may be applied only for case captions and section names. Nevertheless, quoted passages may use the original type styles and capitalization.**

**(2) Type Volume Limitation.** Appellant and appellee briefs are acceptable if they contain no more than the greater of 10,000 words or 50,000 characters. A reply brief and amicus curiae brief are acceptable if they contain no more than half the type volume specified for appellant and appellee briefs.

**(3) Headings, footnotes, and quotations** count toward the word and character limitations. The table of contents, table of cases, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel do not count toward the limitations.

**(4) Certificate of Compliance.** A brief submitted under § 15-26A-66(b) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type volume limitation. The certificate must state the number of words or characters in the brief. The person preparing the certificate may rely on the word or character count of the word-processing system used to prepare the brief.

**(c) Upon approval of the Supreme Court,** page or word limitations for briefs may be exceeded. A written request for such approval to exceed limitations shall be filed at least ten days prior to the filing date of the brief, specifying in detail the reasons why additions are necessary and stating the number of additional pages or words requested.

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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APPEAL NO. 31036

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LING MA,  
Appellee,

v.

ZHI GANG ZHANG,  
Appellant

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APPEAL FROM THE CIRCUIT COURT  
FIFTH CIRCUIT  
BROWN COUNTY, SOUTH DAKOTA

---

HONORABLE RICHARD A. SOMMERS  
Presiding Judge

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APPELLEE'S BRIEF

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Zhi Gang Zhang  
2508 Primrose Lane  
Aberdeen, SD 57401  
Pro Se Litigant  
Appellant

Mitchell L. Koehn  
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### **PRELIMINARY STATEMENT**

This appeal is brought by Appellant (hereinafter “Zhang”) from a court order ruling that the court lacked personal jurisdiction over the Appellee (hereinafter “Ma”), subject matter jurisdiction over the issues, and that the claims sought within Zhang’s Complaint were barred by the statute of limitations. Accordingly, the Circuit Court granted Ma’s Motion to Dismiss with Prejudice. Zhang is appealing the court’s decision to grant the Motion to Dismiss.

Any references in this brief will be consistent with the page numbers set forth in the settled record, indicated by “SR” followed by the appropriate page number.

### **JURISDICTIONAL STATEMENT**

The Honorable Richard Sommers, presiding over this Brown County matter for the Fifth Judicial Circuit, held a Motions Hearing on February 14, 2025. SR 176-193. A second hearing was held on March 27, 2025, regarding the posting of attorneys’ fees with the clerk’s office prior to the appeal for the award and payment of attorneys’ fees. SR 220-226. Ma was represented by attorney Mitchell L. Koehn of Watertown, South Dakota. SR 57. Zhang appeared pro se. SR 176.

On February 26, 2025, Judge Richard Sommers issued an Order Granting Ma’s Motion to Dismiss with prejudice. SR 171-172. The court ruled that the Fifth Circuit Court lacked personal jurisdiction over Ma, subject matter jurisdiction over the issues, and that the claims sought by Zhang were barred by the statute of limitations. *Id.* The Order further decreed that Zhang’s Complaint was found to be frivolous and ordered Zhang to reimburse Ma for her attorneys’ fees. *Id.*



## STATEMENT OF LEGAL ISSUES

### **I. WHETHER THE TRIAL COURT ERRED IN RULING THAT IT LACKED PERSONAL JURISDICTION OVER MA.**

The Trial Court ruled that it lacked personal jurisdiction over Ma because Ma is not a resident of South Dakota, and Zhang failed to establish minimum contacts with South Dakota.

The most relevant cases related to this issue are as follows:

- a. *Davis v. Otten*, 2022 SD 39, 978 N.W.2d 358.
- b. *State v. Grand River Enters.*, 2008 SD 98, 757 N.W.2d 305.
- c. *Int'l Shoe Co. v. Wash*, 326 U.S. 310, 90 L.Ed. 95.

The most relevant statute related to this issue is:

- a. SDCL § 15-7-2.

### **II. WHETHER THE TRIAL COURT ERRED IN RULING THAT IT LACKED SUBJECT MATTER JURISDICTION.**

The Trial Court ruled that it lacked subject matter jurisdiction over the issues as the issues stemmed from the prior divorce file and could not be addressed in a new civil action.

The most relevant cases related to this issue are as follows:

- a. *Stathis v. Marty Indian Sch.*, 2019 SD 33, 930 N.W.2d 653.

The most relevant statute related to this issue is:

- a. SDCL § 25-9C-211.

**III. WHETHER THE TRIAL COURT ERRED IN RULING THAT THE CLAIMS BROUGHT BY ZHANG ARE BARRED BY THE STATUTE OF LIMITATIONS.**

The Trial Court ruled that the claims brought by Zhang are time barred by the statute of limitations.

The most relevant cases related to this issue are as follows:

- a. *Bruske v. Hille*, 1997 SD 108, 567 N.W.2d 872.
- b. *Edsill v. Schultz*, 2002 SD 44, 643 N.W.2d 760.
- c. *Hoven v. Banner Assocs.*, 2023 SD 33, 993 N.W.2d 562.
- d. *Richards v. Lenz*, 539 N.W.2d 80, 85 (SD 1995).

The most relevant statute related to this issue is:

- a. SDCL § 15-2-13.
- b. SDCL § 17-1-2.
- c. SDCL § 17-1-3.
- d. SDCL § 17-1-4.

**IV. WHETHER THE TRIAL COURT ERRED WHEN IT GRANTED MA'S DISMISSAL WITH PREJUDICE.**

The Trial Court dismissed Zhang's Complaint with prejudice.

The most relevant statute related to this issue is:

- a. SDCL § 15-6-12(b).

**V. WHETHER THE TRIAL COURT ERRED IN GRANTING MA'S REQUEST FOR ATTORNEYS' FEES.**

The Trial Court ruled that Zhang's Complaint was frivolous, and thereby granted Ma an award of attorneys' fees pursuant to SDCL § 15-17-51.

The most relevant cases related to this issue are as follows:

- a. *Fuller v. Croston*, 2006 SD 110, 725 N.W.2d 600.

- b. *Reidburn v. S.D. DOL & Regul., Reemployment Assistance Div.*, 2024 SD 19, 5 N.W.2d 834.

The most relevant statute related to this issue is:

- a. SDCL § 15-17-51.

**VI. WHETHER THE SUPREME COURT CAN CONSIDER NEW ISSUES/FACTS ON APPEAL.**

The Trial Court did not have an opportunity to review a number of the issues, arguments, and facts that Zhang raises for the first time on appeal.

The most relevant cases related to this issue are as follows:

- a. *State v. Vogel*, 315 N.W.2d 324, 328 (SD 1982).  
b. *State v. Rederth*, 376 N.W.2d 579, 580 (SD 1985).  
c. *Wyman v. Bruckner*, 2018 SD 17, 908 N.W.2d 170.

**STATEMENT OF THE CASE**

This appeal originates from the Fifth Circuit Court, presided over by the Honorable Richard Sommers, following an Order granting Ma's Motion to Dismiss with Prejudice. SR 171-178. On September 24, 2024, Zhang filed a new civil action against Ma referenced by South Dakota case file 06CIV24-000534, seeking relief based on, generally, fraud on the court. SR 1-52. On December 4, 2024, Ma filed a Motion to Dismiss Zhang's Complaint, with prejudice. SR 59-60. On February 14, 2025, a hearing was held on Ma's Motion to Dismiss. SR 176-190. Zhang and Ma both briefed the issues before the Trial Court, and the Trial Court heard oral argument. *Id.* On February 26, 2025, the Trial Court issued its written Order, granting Ma's Motion to Dismiss with Prejudice based on the court's lack of personal jurisdiction over Ma, lack of

subject matter jurisdiction over the issues, and that Zhang's claims were time barred by the statute of limitations. SR 171-172. In addition, the Order included an award of attorneys' fees in Ma's favor. *Id.* On March 26, 2025, Zhang filed a Notice of Appeal. SR 207-208. On March 27, 2025, the Trial Court held a brief hearing to address Zhang's inability to post the attorneys' fees as a bond with the clerk. SR 220-226.

### **STATEMENT OF THE FACTS**

Zhang and Ma were married for approximately 23 years. SR 62. They were residents of China at the outset of their marriage. *Id.* In 1994, they moved to the United States. *Id.* Over the course of their marriage, irreconcilable differences arose between the two parties. *Id.* In 2005, Ma left the marital home and moved to Minnesota, where she has resided for the last 20 years. *Id.* Zhang, in the underlying civil action, even properly noted within the Complaint that Ma is a resident of Minnesota. SR 1. Ultimately, in 2009, Zhang filed for a divorce. SR 62. Since he was a resident of Brown County, South Dakota, he chose Brown County, South Dakota as the jurisdiction and venue. SR 1. Zhang and Ma's divorce was a contested one, lasting several years. SR 62. The main issue within the divorce, at least from Zhang's perspective, was the imposition of spousal support in favor of Ma. *Id.* Zhang was ordered to pay Ma spousal support in accordance with South Dakota law. *Id.* Zhang was not pleased by this outcome. Ultimately, the Judgment and Decree of Divorce, incorporating Zhang's spousal support payments, was signed and filed on April 21, 2011. SR 62.

Ever since the entry of the decree, Zhang has done everything in his power to vacate, modify, or blame everyone and everything involved in the divorce action. SR 1-

55. The following is a recounting of the lawsuits brought by Zhang since the entry of the divorce decree:

- South Dakota case file 06CIV13-000329, in which Zhang brought allegations against his attorney of record within the divorce file, Jodi Brown.
- Zhang sought a modification of the spousal support within the divorce file in 2016 and was ultimately unsuccessful.
- South Dakota case file 06CIV16-000446, in which Zhang sought allegations against several attorneys and firms that provided him with advice regarding the divorce file. This case was later appealed to This Court.

SR 22.

In each of the above legal attempts, Zhang reached a dead-end. His arguments, theories, and rationale were meritless. Therefore, he filed a new civil action, the underlying case subject to this appeal, against Ma. SR 1. All claims, issues, and problems within the underlying lawsuit relate to prior attorneys, the prior divorce court, and the legal system. SR 1-55. Nothing within Zhang's 55-page, 200-paragraph Complaint relates to Ma. *Id.* The underlying case is simply another attempt by Zhang to force Ma to incur legal expenses. It is full of improper allegations and random legal theories, all with the confusing intent of seeking reimbursement of alimony payments made to Ma over the years.

### **STANDARD OF REVIEW**

The court reviews motions to dismiss de novo. "A motion to dismiss tests the legal sufficiency of the pleadings, and therefore, we review the Circuit Court's decision on the motion de novo." *Gruhlke v. Sioux Empire Fed. Credit Union*, 2008 SD 89, ¶ 17,

756 N.W.2d 399, 408. "Under a de novo standard of review, the court 'makes a careful and independent review of both the factual findings and the conclusions of law.'" *Grassi Fund Admin. Servs. v. Crederian, LLC*, 2022 Del. Ch. 80.

An award of attorneys' fees is generally viewed under the abuse of discretion standard. "A circuit court's ruling on the allowance or disallowance of costs and attorney's fees is reviewed by this Court under the abuse of discretion standard of review." *Osdoba v. Kelley-Osdoba*, 2018 S.D. 43, ¶ 10, 913 N.W.2d 496, 500 (quoting *Terca v. Terca*, 2008 S.D. 99, ¶ 18, 757 N.W.2d 319, 324). "An abuse of discretion occurs when discretion is exercised to an end or purpose not justified by, and clearly against, reason and evidence." *Id.* (citation omitted).

## **ARGUMENT**

### **I. WHETHER THE TRIAL COURT ERRED IN RULING THAT IT LACKED PERSONAL JURISDICTION OVER MA.**

The Trial Court ruled correctly that it lacked personal jurisdiction over Ma. Personal jurisdiction is established under these theories: personal presence in the state, minimum contacts, real property in the state, long arm statutes, or consent to jurisdiction. Here, it is uncontested that Ma is not a resident of the State of South Dakota. Zhang properly states in his Complaint that Ma is a resident of Minnesota and has been since 2005. SR 1.

For South Dakota to exercise personal jurisdiction over a non-resident party, two conditions must be satisfied. First, the court must determine that 'the legislature granted the court jurisdiction pursuant to South Dakota's long arm statute, SDCL 15-7-2.' The court must then determine that the exercise of jurisdiction 'comports with federal due process requirements.' The party seeking to establish the court's personal jurisdiction over the defendant has the burden of showing a prima facie case of jurisdiction.

*Davis v. Otten*, 2022 SD 39, ¶ 12, 978 N.W.2d 358, 363 (citations omitted). Our Supreme Court has frequently recognized and upheld the test handed down by our United States Supreme Court coined the “minimum contacts test,” or “*International Shoe*.” *State v. Grand River Enters.*, 2008 SD 98, ¶ 12, 757 N.W.2d 305, 309.

In *International Shoe*, the United States Supreme Court established the minimum contacts test for determining whether personal jurisdiction comports with Fourteenth Amendment due process. According to the Court, due process requires that a non-resident defendant “have certain minimum contacts with the forum state such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”

*Id.* (citations omitted).

Following the above legal precedent, Zhang has the burden of showing a prima facie case of jurisdiction, see *Davis*. Rather than establishing jurisdiction, Zhang does quite the opposite. Zhang, within his own Complaint, properly notes that Ma has not been a resident of the State of South Dakota for over 20 years. SR 1. Therefore, she is considered a nonresident for purposes of South Dakota’s long arm statute, SDCL 15-7-2, and/or the minimum contacts test established by *International Shoe* and upheld by our South Dakota Supreme Court. Thus, this court must determine whether or not Zhang established any facts to support the idea that Ma has personally availed herself of South Dakota’s jurisdiction pursuant to SDCL 15-7-2.

It is clear, from the underlying record, pleadings, transcript, and all other relevant information, that Zhang failed to establish minimum contacts in South Dakota over Ma. The Circuit Court properly asked Zhang, “Under what theory do you think I can proceed, when clearly the statute has run and Ms. Ma is not a resident of the State of South Dakota?” SR 177-178. Rather than providing any evidence regarding the establishment

of personal jurisdiction, or really any substantive argument, Zhang began discussing fraud on the court. SR 179-180. The fact that Zhang believes that fraud was committed in the prior divorce action is not per se evidence that establishes minimum contacts as Zhang believes. Zhang is required to establish specific facts and circumstances that allow the Circuit Court's jurisdiction over Ma. Zhang was unable to do so because Ma has not lived in South Dakota for over 20 years, she does not do any business here, she does not own any property, she does not travel here, and she otherwise has not engaged in any other act referenced in SDCL 15-7-2 that would allow the Circuit Court to establish personal jurisdiction over her.

Finally, even if Zhang referenced some small act that could possibly impose personal jurisdiction, the second prong of the test still fails. This Court must determine if the exercise of jurisdiction would "comport with federal due process requirements," or that if the suit were allowed to be maintained, the suit would not offend "traditional notions of fair play and substantial justice." See *Davis* and *International Shoe*. It is clear that dragging Ma into South Dakota courts and subjecting her to South Dakota jurisdiction based on some meritless fraud on the court claim violates the traditional notions of fair play and substantial justice. We would be plucking her from her home and thrusting her into our court system.

The Circuit Court properly referenced the explicit distinction between the prior divorce file, and the new civil action filed by Zhang. Although continuing jurisdiction may have existed in the divorce court, when Zhang chose the legal procedure that he did, he was again required to establish jurisdiction over Ma, which he could not. In light of



those facts and issues, the Circuit Court properly dismissed the case for lack of personal jurisdiction.

## **II. WHETHER THE TRIAL COURT ERRED IN RULING THAT IT LACKED SUBJECT MATTER JURISDICTION.**

The Trial Court ruled correctly that it lacked subject matter jurisdiction over the issues.

Subject matter jurisdiction is a court's competence to hear and determine cases of the general class to which proceedings in question belong; the power to deal with the general subject involved in the action; and deals with the court's competence to hear a particular category of cases. Subject matter jurisdiction is conferred solely by constitutional or statutory provisions. Subject matter jurisdiction can neither be conferred on a court, nor denied to a court by the acts of the parties or the procedures they employ. The test for determining jurisdiction is ordinarily the nature of the case, as made by the complaint, and the relief sought.

*Stathis v. Marty Indian Sch.*, 2019 SD 33, ¶ 14, 930 N.W.2d 653, 658. The Circuit Court found that it lacked subject matter jurisdiction due to South Dakota's frequently recognized "continuing jurisdiction" statutes. SDCL 25-9C-211 details the exclusive jurisdiction over a spousal support order. SDCL 25-9C-211 states in relevant part "a tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation." SDCL 25-9C-211.

Employing the tests detailed above, the test for subject matter jurisdiction is again two-pronged: (1) the nature of the case, as made by the Complaint, and (2) the relief sought.

### **A. The Nature of the Case**

Based on Zhang's own Complaint, the nature of the underlying civil suit revolves around issues regarding alleged fraud on the court with respect to the divorce court's

ruling on alimony, or spousal support. SR 1-55. Zhang used over 50 pages and over 200 paragraphs in his Complaint to allege fraudulent conduct caused by prior attorneys, judges, accountants, and virtually anyone that had any involvement with his prior divorce file. *Id.* The entirety of the Complaint was brought for the purpose of vacating, modifying, or otherwise seeking reimbursement of the spousal support Zhang was required to pay to Ma pursuant to the divorce file. It is clear that the underlying Complaint seeks to establish issues and allegations that can only be heard/resolved within the prior divorce file. This is especially true when including South Dakota's continuing jurisdiction statutes into the analysis. Per SDCL 25-9C-211, the divorce court maintains continuing jurisdiction of the spousal support determination. The statute strictly prohibits Zhang from filing a separate, unrelated civil file seeking to modify the spousal support.

### **B. The Relief Sought**

The second prong under the subject matter jurisdiction test is to analyze the relief sought. The question before this court, effectively, is whether or not the relief sought would provide the Circuit Court with subject matter jurisdiction over the issues. Ma would encourage this court to review the Prayer for Relief found in Zhang's Complaint. SR 50-51. As a summary, Zhang requested the following relief: (1) vacation of the divorce order, (2) monetary damages associated with the divorce file, and (3) effectively injunctive relief requiring Ma to apologize for her actions within the prior divorce file. *Id.* Each and every form of relief, in one way or another, either specifically, or indirectly, references the prior divorce file. Zhang brought this separate civil action hoping to obtain a new, unrelated court, as his repeated attempts within the prior divorce file to modify spousal support were fruitless. Unfortunately for him, and fortunately for

Ma, the Circuit Court did not get lost in the weeds of Zhang's arguments and declined to address the underlying claims. The prior divorce file has continuing jurisdiction of the spousal order, alleged fraudulent conduct, and otherwise any other thing or matter related to the determination of spousal support. See SDCL 25-9C-211. The Circuit Court was well spoken when it stated: "Your remedy for fraud is not a new action. Your remedy for fraud, if you can prove it, which is doubtful, is to go back into the divorce file, file a motion in the divorce file seeking relief from your alimony obligation based on whatever factors you might feel is appropriate." SR 190. Ultimately, the Circuit Court properly ruled that it lacked subject matter jurisdiction over the issues.

### **III. WHETHER THE TRIAL COURT ERRED IN RULING THAT THE CLAIMS BROUGHT BY ZHANG ARE BARRED BY THE STATUTE OF LIMITATIONS.**

The Trial Court ruled correctly that Zhang's claims were barred by the Statute of Limitations. The concept of Statute of Limitations is well settled in South Dakota. SDCL 15-2 discusses limitations of actions, generally. SDCL 15-2-13 states in relevant part: "Except where, in special cases, a different limitation is prescribed by statute, the following civil actions . . . can be commenced only within six years after the cause of action shall have accrued: . . . (6) An action for relief on the ground of fraud." SDCL 15-2-13. "Causes of action alleging fraud . . . are subject to a six-year statute of limitations." *Richards v. Lenz*, 539 N.W.2d 80, 85 (SD 1995). "The general purpose of the statute of limitations is to limit, not extend, claimant's rights. The purpose of a statute of limitations is speedy and fair adjudication of the respective rights of the parties." *Edsill v. Schultz*, 2002 SD 44, ¶ 13, 643 N.W.2d 760, 764.

In order to determine whether the statute of limitations applies, the court must look to when the statute of limitations begins to run. “With fraud and deceit, the six-year statute of limitations applies and would not begin to run ‘until the aggrieved party discovers, or has actual or constructive notice of, the facts constituting the fraud.’”

*Bruske v. Hille*, 1997 SD 108, ¶ 10, 567 N.W.2d 872, 875 (citations omitted). “Actual notice consists in express information of a fact.” SDCL 17-1-2. “Constructive notice is notice imputed by the law to a person not having actual notice.” SDCL 17-1-3. “Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself.” SDCL 17-1-4. “Either actual or constructive notice, therefore, will equally suffice to start the statute of limitations’ clock running.” *Hoven v. Banner Assocs.*, 2023 SD 33 ¶ 32, 993 N.W.2d 562, 571.

Here, Zhang possessed both actual and constructive notice of the nonexistence of the alleged fraud. Zhang repeatedly states dozens of times throughout his Complaint, briefs, and in argument to the underlying court, that Zhang sought advice from somewhere in the ballpark of five or six attorneys regarding the alleged fraud on the court. SR 39, 48-49. These meetings and consultations began soon after the conclusion of the prior divorce file. In fact, Zhang even provided copies of prior correspondence with attorneys stating that following their review they did not believe fraud on the court existed within the divorce file. *See* Appellant’s Appendix. This behavior of Zhang, repeatedly jumping from legal counsel to legal counsel, until one of them told him fraud existed, is actual and constructive knowledge of the alleged fraud. Zhang’s only

problem: no fraud occurred. That is why Zhang attempts to argue in this action that the statute of limitations has not run, because he had no notice. It is true that there is no notice of something when it has not occurred. But, if the alleged fraud did occur, Zhang surely possessed actual and constructive notice of that fact when he sought assistance from a half dozen attorneys seeking to file a lawsuit against Ma. Overall, the Circuit Court properly found that Zhang's claims are barred by the statute of limitations.

**IV. WHETHER THE TRIAL COURT ERRED WHEN IT GRANTED MA'S DISMISSAL WITH PREJUDICE.**

The Trial Court properly granted a dismissal under SDCL 15-6-12(b) with prejudice. Ma, in her Motion to Dismiss, sought a dismissal under SDCL 15-6-12(b)(2), (5), and (6). The Circuit Court granted Ma's Motion to Dismiss on SDCL 15-6-12(b)(1) and (2), and that the claims sought by Zhang are outside the statute of limitations. Intuitively, a case dismissed for lack of personal jurisdiction, subject matter jurisdiction, and one that is outside the statute of limitations, is dismissed with prejudice. Zhang cannot create some new set of facts or law to suggest that the court has jurisdiction over Ma, he cannot modify his pleadings to create subject matter jurisdiction, nor can he shorten or remove the notice he possessed causing his case to be barred by the statute of limitations. Ma does not feel it necessary to address this issue in depth.

**V. WHETHER THE TRIAL COURT ERRED IN GRANTING MA'S REQUEST FOR ATTORNEY'S FEES.**

**A. Malicious v. Frivolous Claims**

The Trial Court did not abuse its discretion in granting Ma an award for her attorney's fees. "Attorney's fees are allowed when there is a contractual agreement that the prevailing party is entitled to attorney's fees or there is statutory authority authorizing

an award of attorney's fees." *Fuller v. Croston*, 2006 SD 110, ¶ 41, 725 N.W.2d 600, 611. The case brought by Zhang does not stem from an agreement between Zhang and Ma, thus, the award of attorneys' fees must be statutorily authorized. SDCL 15-17-51 states:

If a civil action, including an action for appeal of a zoning decision, or special proceeding is dismissed or requested relief is denied and if the court determines that it was frivolous or brought for malicious purposes, the court shall order the party whose claim, cause of action, or defense was dismissed or denied to pay part or all expenses incurred by the party defending the matter, including reasonable attorneys' fees.

SDCL 15-17-51. Furthermore, this court has held:

A frivolous action exists when the proponent can present no rational argument based on the evidence or law in support of the claim. To fall to the level of frivolousness there must be such a deficiency in fact or law that no reasonable person could expect a favorable judicial ruling. Malice, on the other hand, exists when the proceedings are instituted primarily for an improper purpose. In defining what constitutes an improper purpose, we noted that such can occur when "the plaintiff in the original action was actuated by any unjustifiable motive, as where he did not believe his claim would be held valid, or where his primary motive was hostility or ill will, or where his sole purpose was to deprive the defendant of a beneficial use of his property or to force a settlement having no relation to the merits of the claim.

*Reidburn v. S.D. DOL & Regul., Reemployment Assistance Div.*, 2024 SD 19, ¶ 29, 5 N.W.2d 834, 841 (citations omitted).

Ma, in her pleadings and through brief argument to the Circuit Court, sought a determination from the court that Zhang's Complaint was brought with malicious intent, and in the alternative, was frivolous. The court ultimately determined the Complaint was frivolous. SR 171-172. Ma is entitled to an award of her attorneys' fees under either theory.

**i. Malicious Intent.**

Ma is adamant that Zhang brought this action with malicious intent. Ma was able to successfully impose a spousal support amount against Zhang within the parties' divorce file. Every day since then, Zhang has rifled various lawsuits, motions, pleadings, etc. at Ma seeking a modification or vacation of the spousal order. Ma has constantly been subjected to the South Dakota judicial system, even though she has long since moved. In each and every instance, Zhang is unsuccessful. When his own legal counsel began to inform him of the dead-ends he had reached, Zhang would simply terminate their representation and seek new counsel. Zhang heard "no" so many times that he finally decided to file a Complaint pro se. Ma has moved on with her life. It is clear Zhang has not. Ma believes Zhang brought this action, and all of his other motions and various lawsuits, with malicious intent. Zhang wants to force Ma to spend exorbitant amounts on legal fees as that is the only way he can "win" against Ma.

**ii. Frivolous Claims.**

Even though Ma is adamant that Zhang's claims are brought with malicious intent, if this court determines they are not malicious, they are most certainly frivolous. As cited above, "to fall to the level of frivolousness there must be such a deficiency in fact or law that no reasonable person could expect a favorable judicial ruling." *Reidburn v. S.D. DOL & Regul., Reemployment Assistance Div.*, 2024 SD 19, ¶ 29, 5 N.W.2d 834, 841 (citations omitted). Here, Zhang sought advice from numerous attorneys regarding the alleged fraud on the court. All of the attorneys that reviewed the facts, materials, and evidence subject to the divorce file suggested to Zhang that no fraud on the court was committed. Zhang's own pleadings highlight the "reasonableness" behind his filings.

Furthermore, Zhang's entire Complaint is based on a distaste for the judicial system as a whole and has relatively nothing to do with Ma. He includes issues with Ma's prior counsel, Zhang's own prior counsel, the prior judge, and virtually everyone other than Ling Ma. In fact, upon review of his 50 plus page, 200 paragraph Complaint, not a single provision is related to the conduct of Ma, or references issues associated with her. SR 1-55. Zhang tries to make some outlandish agency theory to refute the frivolous claims. However, his agency argument is not presented in the underlying Complaint.

Ultimately, this Court is tasked with reviewing the Circuit Court's decision regarding its award of attorneys' fees on an abuse of discretion standard. Ma strongly urges this court to uphold the Circuit Court's determination. Nothing within Zhang's pleadings, arguments, citations<sup>1</sup>, or issues would cause a reasonable person to expect a favorable judicial ruling.

#### **B. Itemized Statement**

Zhang also argues that the Trial Court's award of attorneys' fees was improper because Ma's counsel allegedly failed to provide him with an itemized statement for his review, and did not provide Zhang with a copy of the Affidavit prior to the Trial Court's consideration. These arguments are untrue. First, Ma's counsel filed an Affidavit of Defendant's Attorney Regarding Attorney's Fees on February 19, 2025. SR 169-170. Included in that document is a Certificate of Service, whereby Ma's counsel certified that the Affidavit was served by emailing and mailing a copy to Zhang. Zhang even references the Certificate of Service in his brief to this court. *See Appellant's Brief*

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<sup>1</sup> Zhang frequently cites outside jurisdictions, law review articles, websites, and other various, random, and unintelligent cites to try to bolster his obscene arguments. Zhang is aware that his arguments are discreditable.



page 35. Ma's counsel emailed a copy of the Affidavit to Zhang and placed a copy in the mail addressed to the address Zhang provided the court system. Zhang had proper notice of the Affidavit requested by the Trial Court.

Another issue Zhang raises with respect to the Trial Court granting Ma an award of attorney's fees is that Ma's counsel did not provide Zhang with a copy of an itemized statement. Zhang cites *Am. Legion Home Ass'n Post 22 v. Pennington Cty.*, 2018 SD 72, 919 N.W.2d 346. In *Am. Legion Home Ass'n Post 22*, the court "stressed the importance of itemized attorney fee requests to allow the *circuit court* to determine a reasonable fee." *Id.* at ¶ 39 (emphasis added) (citations omitted). "Indeed, 'without any itemization or time frame' to support the requested award of attorney's fees, the circuit court lacks 'sufficient information upon which to conclude that an award of attorney's fees was reasonable.'" *Id.*

Here, the Trial Court merely required Ma's counsel to file and serve an Affidavit of Attorney's Fees. SR 192. THE COURT: "All right. You can submit your affidavit and fees and serve them upon him, and I'll make a ruling on that, and they can be included in the order." *Id.* In accordance with the Trial Court's directive, Ma's counsel prepared an Affidavit of Fees and submitted that Affidavit to the court and served it on Zhang. SR 169-170. The Affidavit was also filed. However, Ma's counsel also provided an itemized statement directly to the Circuit Court. Ma's counsel did not provide the statement to Zhang directly because the statement is riddled with confidential information and attorney work product. Zhang has used these records in the past to bring lawsuits against Ma's counsel and for other malicious reasons. South Dakota case law requires the production of an itemized statement to the court for the court to consider the

reasonableness of the fees. Zhang already had an opportunity to object to Ma's attorneys' fees request in his pleadings, which he did, and at the hearing. Ultimately, the Circuit Court, after receiving a proper motion/request for attorney's fees, an Affidavit and an itemized statement, included an award of attorney's fees on behalf of Ma in its Order. SR 171-172.

**VI. WHETHER THE SUPREME COURT CAN CONSIDER NEW ISSUES/FACTS ON APPEAL.**

This court has repeatedly held that it cannot consider new issues on appeal, or issues that were not raised at the Circuit Court level. "The general rule of this Court is that an issue may not be raised for the first time on appeal." *State v. Vogel*, 315 N.W.2d 324, 328 (SD 1982). "Appeals are decided entirely on the record received from the Trial Court. The Supreme Court of South Dakota cannot take new evidence on appeal." *State v. Rederth*, 376 N.W.2d 579, 580 (SD 1985). "We have consistently held that this Court may not review theories argued for the first time on appeal." *Wyman v. Bruckner*, 2018 SD 17, ¶ 16, 908 N.W.2d 170, 176 (citations omitted).

The majority of Zhang's appellate brief attempts to address or raise new issues that were not addressed by the Circuit Court. The Circuit Court simply addressed Ma's Motion to Dismiss and made a ruling on that Motion to Dismiss. Zhang is prohibited from raising new issues and evidence on appeal. This court need not delve into the lengthy arguments presented by Zhang regarding fraud on the court, misconduct, or relatively any other matter or argument presented in Zhang's brief. Rather, this court need only consider those facts and issues relevant to the Motion to Dismiss, and the award of attorneys' fees. And, when reviewed in its entirety, Ma strongly urges this court

to uphold the Trial Court's decision, and disregard the unfounded arguments and issues presented by Zhang.

### CONCLUSION

Ma urges this court to affirm the decision of the Trial Court in its entirety. The Trial Court considered hundreds of pages of pleadings and heard oral arguments from both parties. All of Zhang's written and oral arguments, both at the Trial Court level and before this court, are meritless, confusing, inapplicable, inappropriate, and a waste of our limited judicial resources. The Trial Court properly dismissed Zhang's frivolous Complaint for lack of personal jurisdiction, subject matter jurisdiction, and statute of limitations issues. Furthermore, by the pleadings themselves, Zhang's arguments are entirely malicious and/or frivolous, and Ma was entitled to an award of attorneys' fees. It is clear that no reasonable person, after receiving the same advice from over five attorneys, reasonably believes he can be successful in his claims. Accordingly, Ma is respectfully requesting that this court affirm the Circuit Court's Dismissal with Prejudice and award of attorneys' fees.

Respectfully submitted this 18<sup>th</sup> day of June, 2025.

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BY: 

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State Bar #5158

### **CERTIFICATE OF COMPLIANCE**

I, Mitchell L. Koehn, attorney for the Appellee, hereby certifies that the Appellee's Brief complies with the type volume limitation as provided in SDCL 15-26A-66 and that the Appellee's Brief contains 4,841 words and is set in Times New Roman, size 12.

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

A handwritten signature in black ink, appearing to read 'MLK', is written above a horizontal line.

Mitchell L. Koehn

### **CERTIFICATE OF SERVICE**

I, Mitchell L. Koehn, hereby certify that on the 18<sup>th</sup> day of June, 2025, I mailed the original Appellee's Brief to the Supreme Court at the address below and emailed a Word version of the Appellee's Brief, along with a PDF version to the following address:

Supreme Court Clerk's Office  
500 East Capital Avenue  
Pierre, SD 57201-5070  
[SCClerkBriefs@ujls.state.sd.us](mailto:SCClerkBriefs@ujls.state.sd.us)

I further certify that I mailed one copy of the Appellee's Brief via First Class United States Mail and an electronic copy via Electronic Mail to the following parties:

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this 18<sup>th</sup> day of June, 2025.

AUSTIN, STRAIT, BENSON,  
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BY: 

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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

JUL 18 2025

*Shirley A. Johnson-Land*  
Clerk

ZHI GANG ZHANG,

Appellant

v.

LING MA

Appellee

**APPELLANT'S  
REPLY BRIEF**

#31036  
(06Civ. 24-000534)

On Appeal from the Judgment of the Fifth Judicial Circuit Court, South Dakota

Honorable Richard A. Sommers

Pro Se Litigant, Appellant

Zhi Gang Zhang

2508 Primrose Lane, Aberdeen SD 57401

Attorneys for Appellee:

Mitchell L. Koehn, Attorney for Appellee Ling Ma

25 First Avenue S.W. Watertown SD 57201

The Notice of Appeal was filed on March 26, 2025.

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## **JURISDICTIONAL STATEMENT**

The Honorable Richard A. Sommers issued an Order granting Appellee Ling Ma's motion to dismiss on February 26, 2025.

The Appellant filed his Notice of Appeal on March 26, 2025.

This Court has jurisdiction over this matter pursuant to SDLC § 15-26A-3.

## **PARTIES AND ABBREVIATIONS**

Parties in the brief:

Ma: Appellee, Ling Ma,

Zhang: Appellant, Zhi Gang Zhang

Oliver: Harvey Oliver, Appellee's attorney in Div09-887

Brown: Jodi Brown, Appellant's attorney in Div09-887

Jin: Julie Jin, CPA for Appellee in Div09-887

CFP Johnson: Agatha Johnson, CFP, expert witness for Appellee in Div09-887

Attorney Johnson: Richard A. Johnson, Appellant attorney 2015-2017

Rasmus: Attorney Dan Rasmus, Appellant attorney in Civ13-329

Koehn: Mitchell L. Koehn, Appellee Attorney in Civ24-534

Abbreviations:

Pro Se Appellant does not have access to Odyssey; thus, no detailed page numbers on Odyssey could be provided for reference.

Ci: Clerk Index.

Op: Original page number on document.

fn: footnotes

ZAB: Zhang appellant brief.

MRB: Ma (Appellee) respondent brief.

## STATEMENT OF THE ISSUES AND AUTHORITIES

- I. Mr. Koehn's labeling fraud on the court pleaded in the complaint as "theory argued for the first time on appeal" cannot obscure the core contention of the legal proceeding

*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944)

*Demjanjuk v. Petrovsky* 1993, 6th Cir., 10 F.3d 338, 348

*Pumphrey v. K.W. Thompson Tool Co.* 1995, 9th Cir., 62 F.3d 1128

James W.M. Moore *Federal Relief from Civil Judgments*, Yale L.J. 55 (4), 623-693

FRCP 60(b)

SDCL 15-6-60 (b)

FRCP 60(d)(3)

SDCL 22-12A-15

- II. The trial court chose to credit Mr. Koehn, the legal professional, over the pro se litigant; however, Mr. Koehn's court filings contradict established facts and reflect a lack of candor toward the tribunals.

*In re Tornow* 2013, S.D., 835 N.W.2d 912

- 1 Mr. Koehn's statement in the appellee's brief, intended to exonerate Ling Ma from specific jurisdiction, contradicts the facts in the existing court record

- 2 Mr. Koehn's statement in the appellee's brief is not factual.

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3 Mr. Koehn's red herring fallacy tactics in his court filings to mislead the courts

*Charter Tp. of Muskegon v. City of Muskegon* 2002, 6th Cir., 303 F.3d 755

*United States v. Beggerly*, 524 U.S. 38 (1998)

*Toscano v. Commissioner of Internal Revenue*, 441 F.2d 930 (9th Cir. 1971)

4 Mr. Koehn mischaracterized key facts to derail the proper court filing

5 Even in describing the most recent hearing, Mr. Koehn failed to demonstrate candor toward this Court

III. Ordinary fraud is subject to a statute of limitations, but fraud on the court is not

*Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128 (9th Cir. 1995)

*Robinson v. Audi Aktiengesellschaft* 1995, 10th Cir., 56 F.3d 1259

Rule 60(b)(3)

IV. The existence of SDCL 15-6-60 (b), specifically its "fraud clause", serves a specific legal purpose. The trial court's disfavor of independent filing cannot be used as a valid basis to assert a lack of personal or subject matter jurisdiction, as incorrectly defended by Mr. Koehn (MRB9-12)

*Dausuel v. Dausuel*, 195 F.2d 774 (D.C. Cir. 1952)

*Great Coastal Exp. V60(b). International Broth* 1982, 4th Cir., 675 F.2d 1349

SDCL 15-6-60(b)

FRCP60(d)(3)

V. Further response to Mr. Koehn's concerns regarding new issues or facts.

Conclusion

*John T. Kolinski* The Florida Bar J. Vol. 78, No 2, Feb, 2004 Pg 16.

## INTRODUCTION

“Fraud and justice never dwell together” is a legal maxim that continues to inspire today’s pursuit of equity. Civ24-534 was filed in response to the systematic active involvement of attorney Harvey Oliver, either acting alone or teamed with a group of “experts,” in creating and submitting fraudulent documents to the trial court on behalf of Appellee Ling Ma, which influenced the outcome of Div09-887.

Attorney Koehn’s brief for motion to dismiss the complaint filed for fraud on the court contains only one sentence related to opposing fraud on the court, asserting that Appellee/Ma did not commit “fraud on the court through any action of her own”(Ci61, Op10). Even the only sentence for opposition deviated from the correct legal definition of fraud on the court. Koehn substitutes fraud on the court with ordinary fraud in his court filings, disregarding both the specific facts alleged and the governing laws outlined in the complaint. In the Appellee’s Brief, there is an occurrence of a “some meritless fraud on the court claim” (MRB, Op9), while seven other times of the term “fraud on the court” appear purely in Koehn’s recounting of issues pleaded in Appellant/Zhang's complaint. Koehn consistently relies on the red herring fallacy in his court filings, diverting attention from the core allegations by introducing irrelevant arguments. His use of fallacy has escalated to the point of labeling the central allegation of fraud on the court pleaded in the complaint as “new issues/facts” in the Appellee/Ma respondent's brief to avoid appellate review.

## ARGUMENTS

### I

**Mr. Koehn's labeling fraud on the court pleaded in the complaint as "theory argued for the first time on appeal" cannot obscure the core contention of the legal proceeding**

Because Mr. Koehn deliberately employed a red herring fallacy and blatantly ignored the facts and laws presented, replacing fraud on the court with ordinary fraud in his opposition to the Appellant/Zhang's complaint, the trial court's decisions reflected the negative effects of falling for his deceptive tactic, as shown in the appellee's brief. It is therefore necessary to clarify that the two types of fraud differ significantly in definition, statute of limitations, responsible parties, and other legal standards as outlined in rule FRCP 60(b) and its corresponding South Dakota counterpart, rule SDCL 15-6-60(b).

Professor James W. Moore, in his article "*Federal Relief from Civil Judgments*" published in the Yale Law Journal (Yale L.J. 55 (4), 623-693), outlines the historical development of Rule 60(b) of the Federal Rules of Civil Procedure (FRCP). He traces its evolution from a range of earlier pathways for seeking relief from wrongful court judgments. The 2007 restyling of FRCP 60 separated "fraud on the court" from the previous FRCP 60(b) "saving's clause" (Appellant/Zhang name it as "fraud clause" in this brief) and relocated it to FRCP 60(d)(3), which explicitly authorizes courts to "set aside a judgment for fraud on the court."

*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), played a crucial role in shaping and interpreting FRCP 60(b). It was a case filed 13 years after the initial court filing, and *Hazel-Atlas* had already obtained some information about potential fraud after the initial court ruling. [Professor James] Moore's Federal Rule of

Civil Practice is referenced in most case law involving fraud on the court. Most states, including South Dakota, still follow the 1946 version of FRCP 60(b), which maintains the original "fraud clause" in its format.

The generally accepted standard for fraud on the court is that the fraud: 1. On the part of an officer of the court; 2. That is directed to the "judicial machinery" itself; 3. That is intentionally false, wilfully blind to the truth, or is in reckless disregard for the truth; 4. That is a positive averment or is concealment when one is under a duty to disclose; 5. That deceives the court. *Demjanjuk v. Petrovsky* 1993, 6th Cir., 10 F.3d 338, 348.

*Pumphrey v. K.W. Thompson Tool Co.* is a leading case in the application of FRCP 60(b) and its doctrine of fraud on the court. The case is regarding a defense attorney hiding a demonstrative video. The plaintiffs brought an independent action under Rule 60(b), seeking to set aside the original verdict on the grounds of fraud on the court. The court held that "fraud on the court" extends beyond bribery or corruption of a judge. It also includes misconduct by an officer of the court (such as an attorney) when that conduct subverts the integrity of the judicial process itself. This includes deliberate schemes to mislead the court and opposing parties, particularly when such actions impair the court's ability to make an impartial and informed judgment. The court distinguished between ordinary fraud, which is subject to the one-year time limit of Rule 60(b)(3), and "fraud on the court," which is more egregious and not time-barred.

The court found that Attorney Bartlett's actions constituted an unconscionable scheme intended to improperly influence both the court and jury, thus meeting the high standard for fraud on the court. The court emphasized that the primary concern is on the integrity of the judicial process, rather than the outcome for the individual parties. The

• court also held that the appropriate remedy was a new trial on all issues, not just liability,  
because the fraud tainted the entire proceeding. *Pumphrey v. K.W. Thompson Tool*  
• Co.1995, 9th Cir., 62 F.3d 1128

• The facts outlined and elaborated in Appellant/Zhang's complaint meet all criteria,  
including the strictest standards, for fraud on the court. Attorney Oliver collaborated with  
several professionals to deliberately establish a systematic scheme to conduct multiple  
instances of fraud on the court. These actions spanned multiple proceedings, including  
court hearings and the final trial, with the intent of influencing the court's decision.  
Whereas in *Hazel-Atlas* the fraud involved a single fabricated document, and in  
"Thompson" only one key piece of evidence was deliberately concealed, the scheme in  
this case involved multiple fraudulent documents and acts across several proceedings.  
• Oliver created a fraudulent document and deceptively persuaded Appellant/Zhang's  
• Attorney Brown to agree to it (Ci1,Op13¶43). He then used that document to undermine  
Appellant/Zhang's expert CPA David Brandt's court testimony, purposefully asserting  
Brown's agreement to bypass the court challenging process (Ci1,Op4,fn7) and forcing  
Brandt to mistakenly agree with him on his calculations (Ci1,Op13fn47).

During the trial, Brown's response to Oliver's fraud on the court was insufficient  
and disproportionate to the extent of Oliver's fraud. The situation was further aggravated  
by the trial judge, Honorable Jack R. Von Wald, who failed to sanction Oliver for his  
misconduct and permitted him to continue making increasingly elaborate and self-  
contradictory fraudulent statements in an effort to lead (CFP) Johnson's testimony  
following the chamber meeting (Ci1,Op7,fn16,17). Therefore, in this case, the trial



judge's approval further compromises the court's fairness and impartiality to a greater extent than in *Hazel-Atlas*. In *Hazel-Atlas*, the trial court judge did not explicitly tolerate the attorney's fraud on the court. Brown failed to invoke SDCL 15-6-60(b) to file a motion for retrial based on fraud that occurred during the proceedings. Attorney Rasmus was unwilling to disclose the fraud or directly challenge Brown's failure to invoke Rule 60(b) in the properly filed legal proceeding. Attorney Johnson also refused to seek any remedies related to correcting the consequences of fraud on the court in connection with Div09-887 during an alimony modification attempt. The repeated failure or unwillingness of legal professionals to address fraud on the court is a defining characteristic of this case.

Furthermore, CFP Johnson's testimony deliberately deviated from professional standards, as opinions should be based on reliable data. Her testimony also violated basic standards for expert testimony, yet the trial court neither penalized nor challenged it, with Judge Jack R. Von Wald fully accepting it (Ci1,Op42¶145). These testimonies formed the basis for the final alimony decision, as documented in the complaint and trial transcripts (*id*). CFP Johnson's testimony was built upon fraudulent documents, specifically the fabricated 2010 data created by Oliver (Ci1,Op3,4¶15) rather than any verifiable historical facts. The pre-2010 data was based solely on what Appellee/Ma told CPA Julie Jin, without adherence to accounting principles or genuine financial analysis, as revealed in Jin's deposition. The blatant absence of professionalism among "experts" is another characteristic of this instance case.

Oliver's fraud on the court led to a severe miscarriage of justice. More troubling, however, was his method of teaming with other professionals to carry out the scheme, which poses a broader threat to the fundamental fairness of the legal system. Oliver's

manipulation of Brown and ambush CPA David Brandt led the trained accountant to mistakenly accept Oliver's fraudulent accounting results as accurate, as detailed in the complaint (Ci1,Op4,fn7) and reflected in the court record.

Prior to the enactment of Rule 60(b), courts distinguished between intrinsic and extrinsic fraud. The adoption of Rule 60(b) eliminated the requirement for that distinction. *Pumphrey v. K.W. Thompson Tool Co.*, (supra at 6-7) did not differentiate between extrinsic and intrinsic fraud, simply adhering to the framework of Rule 60(b). The present case meets every stringent standard for fraud on the court, including those no longer required under current legal interpretations. Besides, Professor Moore defined fraud on the court itself as extrinsic in his "Federal Practice".

Oliver persuaded Brown to accept his fraudulent accounting outside the courtroom, then used procedural tactics to render that accounting unchallengeable during trial proceedings. Thus, Oliver's accounting and fraudulent methods would qualify as extrinsic fraud by definition. Because Judge Von Wald's tolerated Oliver's misconduct and allowed his self-contradictory statements to stand, the fraud could not be properly challenged during the trial. Without an adequate in-court challenge, the frauds committed by Oliver would be classified as extrinsic. When a trial judge deviates from an unbiased standard, it further deepens the miscarriage of justice, as seen in Div09-887. This highlights the critical importance of SDCL15-6-60(b)(fraud clause) or FRCP 60(d)(3), which allows court to vacate and correct judgments obtained through fraud on the court. This court now has the authority to determine how to prevent opportunities for fraud from overriding justice and to appropriately exercise its powers under SDCL15-6-60(b)(fraud clause) or FRCP60(d)(3).

There were divorce-related issues that ultimately required resolution through the court's fraud on the court pathway of Rule 60 (b) (fraud clause). The case is similar to the instance case with the same track that the Appellant/Zhang is using. *Dausuel v. Dausuel* demonstrated that courts retain the inherent power to set aside judgments for fraud on the court, even after the window for a direct challenge has closed for the divorce case. The case demonstrated that FRCP Rule 60(b) provided the court's authority to entertain an independent action for such relief. The appeal court decided that the trial court could revise the alimony and divorce decree after a related factual review. The case also emphasizes the importance of allowing parties to introduce evidence relevant to claims of fraud on the court. The case highlights the court's discretion to grant relief whenever justice requires it, *Dausuel v. Dausuel*, 195 F.2d 774 (D.C. Cir. 1952). Other courts have also emphasized the importance of merit-based proceedings in resolving fraud on the court-related issues. In *Toscano v. C.I.R.*, the court found that Josephine C. Zelasko's (also known as Josephine C. Toscano) allegations, if proven, would constitute fraud on the court. The Tax Court erred in denying her a hearing on the merits of her claims. The case was remanded for an evidentiary hearing, *Toscano v. C.I.R.*, 1971, 9th Cir., 441 F.2d 930

Despite presenting sufficient undisputed facts in the complaint and meeting all relevant criteria, the trial court improperly dismissed the case without evaluating the complaint during the hearing; instead, the trial court completely fell for Koehn's substitution fallacy. The decision relied on personal impressions of the legal professionals' character rather than on a proper evaluation of the merits or allowing those merits to be established through an appropriate trial process. (Ci176,Op15:2-6,16:5-8).

In the appellee's brief, Koehn reiterated Appellant/Zhang's claim that attorneys suppressed any mention of fraud in the related proceedings, using this alone to argue that no fraud on the court occurred in Div09-887 without providing any facts or legal support for his conclusion. He did not address the specific facts laid out in the complaint or those submitted in the motion for judicial notice (Ci110), which was submitted 17 days before the hearing to be considered in the same proceeding.

All jurisdictions, including South Dakota, emphasize the importance of merit evaluation; dismissing a case with prejudice without examining merit, especially when the underlying reasoning is completely absent, constitutes reversible error under any standard.

## II.

**The trial court chose to credit Mr. Koehn, the legal professional, over the pro se litigant; however, Mr. Koehn's court filings contradict established facts and reflect a lack of candor toward the tribunals.**

"A practitioner of the legal profession does not have the liberty to flirt with the idea that the end justifies the means, or any other rationalization that would excuse less than complete honesty in the practice of the profession." *In re Tornow* 2013, S.D., 835 N.W.2d 912

Attorney misconduct that has affected the course and endangered the outcome of a legal proceeding is not barred from appellate review by a new issue restriction.

**1 Mr. Koehn's statement in the appellee's brief, intended to exonerate Ling Ma from specific jurisdiction, contradicts the facts in the existing court record**

Koehn stated that “Ma has not lived in South Dakota for over 20 years, she does not do any business here, --- she does not travel here, --- to establish personal jurisdiction over her.”(MRB,Op9)

However, the existing court record demonstrates she was part of a team that made false statements, either through her agent, Oliver, or in person before the South Dakota court from 2009 to 2011. Suppose she did not conduct business in South Dakota; how then could Oliver present evidence to the trial court indicating that she hired numerous professionals to assist in deceiving the court within this jurisdiction? If she never traveled to South Dakota, how does she account for airline tickets for Aberdeen SD and hotel expenses incurred here from 2009 to 2011? Additionally, during that time frame, she maintained investment accounts, insurance policies, and engaged in other financial activities in Aberdeen, South Dakota.

## **2 Mr. Koehn’s statement in the appellee's brief is not factual.**

Mr. Koehn stated “It is clear, from the underlying record, pleadings, transcript, and all other relevant information, that Zhang failed to establish minimum contacts in South Dakota over Ma. --- Instead of presenting evidence to establish personal jurisdiction, or making a substantive legal argument, Zhang shifted focus to allegations of fraud on the court”. (MRB,Op8)

The complaint ¶ 3, ¶20 discussed the nature of the lawsuit, the location of the events and how Appellee/Ma was involved in the fraudulent conduct in contrast to “Nothing within---the complaint relates to Ma” alleged by Koehn (MRB, Op6)

In the hearing transcript: “---, this lawsuit is related with fraud on the court and collusions occurred in DIV09-887. So in that action Ling Ma participated throughout a year and a half legal proceeding in this South Dakota court. The facts established specific jurisdiction law cited by Mr. Koehn, specifically, there is a specific jurisdiction — because this is something that happened in South Dakota, ---” (Ci176, Op7:16-23).

In motion for sanction: “Mr. Mitchell L. Koehn is fully aware and mentioned in his motion this current filing concerns Defendant Ling Ma’s direct involvement in document forgery and her hired agent committed “fraud on the court” before a tribunal in South Dakota from late 2009 to the early part of 2011 during the divorce proceedings. This irrefutable fact established a strong foundation for establishing specific jurisdiction in the forum state of South Dakota, rendering his minimum contact arguments baseless.”

The petition for rehearing (Ci194,Op1-3) provided a more comprehensive elaboration with detailed information on the subject.

Appellant/Zhang must assume that the judge will fairly and impartially review all court filings during the hearing. Regarding Koehn's reference to Appellant/Zhang's response to the “theory” question raised during the hearing (MRB, Op8), Appellant/Zhang was trying to highlight the core issue of fraud on the court before addressing other related matters. Additionally, as stated in the appellant’s brief, Appellant/Zhang was in a “shock state” due to the trial court’s introductory statement (ZAB, Op17-19), and, under the circumstances, could only partly process the court’s request for a theoretical explanation without fully understanding all aspects of the court’s question. Unfortunately, the court appears to have been completely swayed by Koehn’s “red herring fallacy” (as explained below) and did not allow Appellant/Zhang to explain

the complaint, let alone elaborate on its content or address related issues. Koehn's fallacy was so convincing that the trial court wrongly dismissed the fraud on the court claim based on subjective impressions of the legal professionals' character, rather than evaluating the complaint's merits or factual details. The court prevented Appellant/Zhang from fully explaining the law and facts supporting his position.

Kohen's appellee brief revealed that he was deliberately using substitutional fallacies from the start of the case; the fallacies used were his tactics rather than mistakes. The South Dakota Supreme Court stated in *In re Tornow* (Supra at page 11), "Certainly our Rules of Professional Conduct allow no such flirtation."

### **3 Mr. Koehn's "red herring fallacy" tactics in his court filings to mislead the courts**

Koehn employed avoidance tactics to divert attention from addressing "fraud on the court" or Rule 60(b)-related issues.

The Sixth Circuit in *Charter Township of Muskegon v. City of Muskegon* held that federal courts retain ongoing jurisdiction to consider Rule 60(b) motions related to their own judgments, regardless of changes in the parties' citizenship or the presence of a federal question, even after more than 30 years have passed since the original judgment. The district court must give the parties an opportunity to be heard on the merits before denying such relief. *Charter Tp. of Muskegon v. City of Muskegon* 2002, 6th Cir., 303 F.3d 755. Even in cases of an "independent action," jurisdiction remains proper as long as the original case was filed in the district court and the current action does not seek "reopening of the dismissed suit." *Id.*

In *United States v. Beggerly*, 524 U.S. 38 (1998), the Supreme Court held that an independent action to set aside a judgment may be brought in the same court that rendered the judgment, relying on ancillary jurisdiction rather than requiring a new, independent basis for federal jurisdiction.

In *Toscano v. Commissioner of Internal Revenue*, 441 F.2d 930 (9th Cir. 1971), the Ninth Circuit held that the Tax Court retains jurisdiction, even after its decision becomes final, to set aside that decision in cases involving fraud on the court.

All the above cases address and refute Koehn's improper assertion that the original court—the Fifth Judicial Circuit Court of South Dakota district court—lacked jurisdiction. His argument sidesteps the central issues raised, namely Rule 60(b) relief and fraud on the court. Similarly, Koehn's invocation of the due process, "fair play and substantial justice" standard is misplaced, as deliberate fraud warrants consequences in the same court where it occurred - or, at a minimum, deference to the original court's jurisdiction is appropriate. The day Appellee/Ma became part of a scheme to commit fraud on the court, she should have been prepared to face justice at the place where the misconduct occurred.

The trial court's ruling on lack of subject matter jurisdiction is incorrect because, as established above, Rule 60(b) and the doctrine of fraud on the court apply, thereby preserving jurisdiction with the original court.

Google search easily confirms that State courts have subject matter jurisdiction involving fraud on the court.

#### **4 Mr. Koehn mischaracterized key facts to derail the proper court filing.**



Koehn attempted to undermine the validity of the court filing and divert attention from the substantive issues with an untruthful statement to the trial court. In the hearing Koehn stated: "It's effectively his sixth attempt to modify, change, or otherwise impose some—basically stopping the alimony payments" (Ci176,Op10:9-11) In his appellee's brief, "the following is a recounting of the lawsuits brought by Zhang since the entry of the divorce decree" (MRB6), here, Koehn listed three legal proceedings instead of six. Although the six attempts had already dropped to three by himself, Koehn still failed to mention that only the one in 2016 was an alimony-related court proceeding in contrary to what he had said in the hearing. Koehn's misrepresentation distorted the nature and scope of the prior filings. Even in the alimony modification attempt of 2016, the judge did not rule on the merits; the motion was halted based on a chamber decision rather than substantive evaluation. (Judge Sommers's statement during the hearing (Ci176,Op14:21-25)(Johnson's email, Attachment 1, Ci194). Notably, Koehn's own statements on the issue are inconsistent and fail to align with one another.

Had there genuinely been six prior instances of Appellant/Zhang targeting alimony, such a pattern might have justified dismissal with prejudice. In reality, Zhang has never been afforded a single opportunity to challenge the fraud for alimony since Div09-887 on its merit, even to this day. Therefore, Koehn's false statement to the court was made with malicious intent and resulted in prejudice against the Appellant/Zhang's properly filed case, effectively blocking the "fraud on the court" claim to date. Koehn's untruthful statement to the lower court carries the serious consequence of wrongfully depriving a citizen of his due process and denying Appellant/Zhang the opportunity for a fair evaluation on the merits.

**5 Even in describing the most recent hearing, Mr. Koehn failed to demonstrate candor toward this Court**

In Appellee brief Koehn stated that “On March 27, 2025, the Trial Court held a brief hearing to address Zhang’s inability to post the attorneys’ fees as a bond with the clerk” (MRB,Op5).

In reality, Koehn first, then the trial court acknowledged that no such payment was required. Koehn stated, “there is not an actual judgment in place against the plaintiff” (Ci220,Op3:24-25). The trial court, “which I don’t think necessarily think is correct because it’s not a money judgement, per se”. Koehn, “correct” (*id*, Op4:20-22).

After the hearing, Koehn reversed his position and started demanding a bond (see attachments for sanction motion). The version in the appellee’s brief does not truthfully reflect the hearing result that “no payment needed” was recorded in the transcript on this non-critical issue, suggesting a possible intent to mislead his client and prolong the proceeding in his favor.

### **III**

**Ordinary fraud is subject to a statute of limitations, but fraud on the court is not**

The trial court’s ruling on the statute of limitations was influenced by Koehn’s use of a red herring fallacy and the mechanical application of a generic filing template, both of which diverted attention from the core issue of fraud on the court.

In *Pumphrey v. K.W. Thompson Tool Co.*, (Supra at page 6-7), the court clearly distinguished between ordinary fraud (subject to the one-year time limit under Rule 60(b)(3)) and "fraud on the court," which is not time-barred. The case serves as a compelling example of the court reopening a 30 year case under the fraud on the court doctrine.

A simple Google search also confirms that there is no statute of limitations for filing a claim for fraud on the court.

The pro se Appellant/Zhang made every reasonable effort to raise the issue of potential fraud with the legal professionals involved previously; however, his legitimate questions were consistently suppressed or strangled by those legal professionals, ultimately contributing to the delay of filing till the instance case as mentioned in the complaint. Had Brown initiated the appropriate filing within one year after the trial, Rule 60(b)(3) could have been applied instead of today's independent filing.

Koehn, in his filing, contradictorily argues that Appellant/Zhang's current filing is untimely, while simultaneously citing the legal professionals' suppression of Zhang's ability to properly identify the fraud as proof that no fraud occurred in Div09-887. This reasoning is circular and overlooks the fact that the very suppression he references is what caused the delay. The delay resulted in significant financial and emotional harm to Appellant/Zhang, the injuries suffered solely by the Appellant/Zhang. It is unjust to attribute the consequences of legal omission and errors to the litigant especially when those failures stemmed from the inaction or suppression of legitimate concerns raised by a legally inexperienced pro se party. Considering that fraud is a Class 5 felony under SDCL22-12A-15, this would explain why these involved legal professionals used their

influence to suppress the properly raised fraud questions by Appellant/Zhang, even going so far as to abandon their client during the legal process in order to protect their collegial relationships in the legal society.

In *Hazel-Atlas*, which is a case filed 13 years after the initial case, in which *Hazel-Atlas* became aware of some of the facts of fraud in that interval, the Supreme Court indicated that the question of whether the aggrieved party exercised due diligence was not necessarily dispositive in the context of fraud on the court. See *Hazel-Atlas*, 322 U.S. at 246, 64 S.Ct. at 1001 ("Surely it cannot be that the preservation of the integrity of the judicial process must always wait upon the diligence of the litigants.") *Robinson v. Audi Aktiengesellschaft* 1995, 10th Cir., 56 F.3d 1259

#### IV

**The existence of SDCL 15-6-60 (b), specifically its "fraud clause", serves a specific legal purpose. The trial court's disfavor of independent filing cannot be used as a valid basis to assert a lack of personal or subject matter jurisdiction, as incorrectly defended by Mr. Koehn (MRB9-12)**

Three cases were cited previously to demonstrate that the continuing jurisdiction of the original court extends not only to fraud on the court but also to claims involving fraud on the court in divorce case.

In cases of fraud on the court, the applicable statute is SDCL15-6-60(b)(fraud clause)(FRCP 60(d)(3). Unlike alimony modification, it is not mandatory to return to the original divorce action even in the same court, as fraud on the court constitutes an independent ground for relief. Once again, Koehn's argument regarding "the relief

sought” (MRB,Op11) in his appellee’s brief constitutes a red herring fallacy as fraud on the court carries its own distinct remedies; see *Dausuel v. Dausuel*, 195 F.2d 774 (D.C. Cir. 1952). Although the same court may provide relief, such relief arises from a separate and independent action; this is precisely the nature of the current complaint filed by Appellant/Zhang.

The independent action pathway exists specifically to address fraud on the court, allowing parties to seek relief beyond the one-year time limit that applies to other forms of fraud under Rule 60(b)(3). The independent action does not alter the nature or underlying facts of the original case, nor does it impact the proper forum or the court’s jurisdiction. Within one year after trial, both 60(b)(3) and 60(b) (fraud clause) [FRCP60(d)(3)] can be used for fraud on the court filing. Other types of fraud can only be filed within one year. According to Koehn’s logic, Rule 60(b)(3) and 60(b) (fraud clause) [FRCP60(d)(3)] must be filed in separate courts or jurisdictions; contrary to his assertion, that is not the case.

Independent action doctrine requires only that the fraud, if disclosed, "would have made a difference in the way . . . counsel approached the case or prepared for trial," *Great Coastal Exp. V60(b). International Broth* 1982, 4th Cir., 675 F.2d 1349

The independent filing in this case aims to address the consequences of Attorney Brown’s failure to raise or file a Rule 60(b) retrial motion as she should have. It is also the only way to lessen the negative impact of ongoing delays caused by other legal professionals who suppressed Appellant/Zhang’s legitimate concerns about fraud. The reluctance of these legal professionals to reveal fraud on the court by their colleagues

appears to be connected to the fraudulent actions involving misdemeanor or felony charges.

## V

### **Further response to Mr. Koehn's concerns regarding new issues or facts.**

All documents and facts certified by the lower court are subject to this court's review, as supported by case law cited by Koehn in his Appellee/Ma's brief. Notably, Appellant/Zhang's intended elaboration and discussion about his filings, with adequate allocated hearing time, were improperly interrupted and prohibited by the trial court (Ci176,Op16:14-21).

If Koehn dislikes, his email and Attorney Rasmus's email can be removed. The absence of relevant court filings can demonstrate Koehn's failure to comply with the trial court's order. The content of the complaint does not rely on Rasmus's email for validation, as the alleged facts are presumed true until later proceedings. The claims remain valid, supported by other certified records from the lower court.

## **CONCLUSION**

"That cheaters should not be allowed to prosper has long been central to the moral fabric of our society and one of the underpinning of our legal system." *John T. Kolinski*  
The Florida Bar J. Vol. 78, No 2, Feb, 2004 Pg 16.

A case filed for fraud on the court, supported by both facts and applicable law, was dismissed with prejudice without giving the filer, Appellant/Zhang, the chance to explain

or elaborate on the complaint during the motion-to-dismiss hearing. The trial court dismissed Appellant/Zhang's other filings that had been scheduled in the same hearing without offering any explanation. The reason for dismissing the complaint was the trial court's uncritical acceptance of the red herring fallacy arguments made by defending attorney Koehn and its reliance on personal impressions of the legal professionals' character, rather than examining the case's merits or the complaint's validity. This highlights the critical need for legal professionals to adhere to ABA standards, as trial courts often blindly accept misleading arguments from counsel and overlook valid claims from a pro se litigant, even when those claims are based on certified court records. Even more troubling is when a legal professional not only uses false reasoning but also acts dishonestly before the court.

The case should be reversed and remanded to allow the truth and merits to prevail in the trial court, rather than dominance by "Red Herring Fallacy".

### **CERTIFICATE OF COMPLIANCE**

Pro Se appellant in compliance with SDCL 15-26A-66 (b)(4) certifies that the font type, size and space is consistent with SDCL 15-26A-66 (a), (b) requirements. The number of words for brief is 4999 in line with 5,000 words limit required by SDCL 15-26A-66 (b)(2).

Signature



Zhi Gang Zhang

July 18, 2025

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

ZHI GANG ZHANG,

Appellant

v.

LING MA

Appellee

**CERTIFICATE  
OF SERVICE**

#31036  
(06Civ. 24-000534)

CERTIFICATE OF SERVICE

I, Zhi Gang Zhang, Pro Se APPELLANT, certify that on July 18, 2025, I served a true and correct copy of the forgoing Appellant's Reply Brief, which was filed with the South Dakota Supreme Court, was served to Appellee/Defendant by E-mailing and by first class mail to:

Mr. Mitchell L. Koehn

E-mail address: mitch@austinlawsd.com

Mailing Address: 25 First Ave SW, Watertown, SD 57201

Pro Se Appellant/Plaintiff Zhi Gang Zhang

Date this 18th day of July, 2025

2508 Primrose Lane

Aberdeen, SD 57401

(612) 270-2859

E Mail: zhang443@abe.midco.net

Signature



Zhi Gang Zhang



IN THE SUPREME COURT  
OF SOUTH DAKOTA

ZHI GANG ZHANG,

Appellant,

vs.

LING MA,

Appellee.

No. 31036

**MOTION FOR APPELLATE  
ATTORNEYS' FEES**

COMES NOW the above-named Appellee, by and through her undersigned counsel, and moves the Court pursuant to SDCL 15-26A-87.3, for an order granting Appellee her appellate attorneys' fees. An award of attorneys' fees is permissible in actions for divorce pursuant to SDCL 15-17-38. This Motion is accompanied by a verified, itemized statement of the legal services performed by Appellee's counsel on appeal. See Affidavit of Mitchell L. Koehn RE: Attorneys' Fees.

The Appellee respectfully requests that this Court grant her the attorneys' fees reasonably expended in defending this appeal.

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

AUSTIN, STRAIT, BENSON,  
THOLE & KOEHN LLP

BY: 

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Watertown, SD 57201  
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*Attorneys for Appellee*

## CERTIFICATE OF SERVICE

I, Mitchell L. Koehn, hereby certify that on the 18<sup>th</sup> day of June, 2025, I mailed the Motion for Appellate Attorneys' Fee to the Supreme Court at the address below and emailed a Word version of the Motion for Appellate Attorneys' Fees, along with a PDF version to the following address:

Supreme Court Clerk's Office  
500 East Capital Avenue  
Pierre, SD 57201-5070  
[SCClerkBriefs@ujs.state.sd.us](mailto:SCClerkBriefs@ujs.state.sd.us)


I further certify that I mailed one copy of the Motion for Appellate Attorneys' Fees via First Class United States Mail and an electronic copy via Electronic Mail to the following parties:

Zhi Gang Zhang, Plaintiff, appearing as Pro Se  
2508 Primrose Lane  
Aberdeen, SD 57201  
(612) 270-2859  
[Zhang443@abe.midco.net](mailto:Zhang443@abe.midco.net)

this 18<sup>th</sup> day of June, 2025.

AUSTIN, STRAIT, BENSON,  
THOLE & KOEHN LLP

BY: \_\_\_\_\_

  
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IN THE SUPREME COURT  
OF SOUTH DAKOTA

ZHI GANG ZHANG,

Appellant,

vs.

LING MA,

Appellee.

No. 31036

**AFFIDAVIT OF MITCHELL L. KOEHN  
RE: ATTORNEYS' FEES**

STATE OF SOUTH DAKOTA

: SS

COUNTY OF CODINGTON

I, Mitchell L. Koehn, being first duly sworn on oath, deposes and states as follows:

1. I am one of the attorneys for the Appellee in this matter, and I have personal knowledge of all matters contained herein.
2. This Affidavit and attendant Motion for Attorneys' fees is made pursuant to SDCL § 15-17-38 and SDCL § 15-26A-87.3.
3. My legal service, as a partner of Austin, Strait, Benson, Thole & Koehn LLP, an attorney for the Appellee, are billed at \$250.00 per hour in this matter.
4. The legal services for David R. Strait, as a partner of Austin, Strait, Benson, Thole & Koehn LLP, an attorney for the Appellee, are billed at \$290.00 per hour in this matter.
5. The legal service for Austin Eidahl, as a paralegal of Austin, Strait, Benson, Thole & Koehn LLP, an attorney for the Appellee, are billed at \$150.00 per hour in this matter.

*Zhi Zhang v. Ling Ma*

*Appeal No. 31036*

*Affidavit of Mitchell L. Koehn RE Attorneys' Fees*

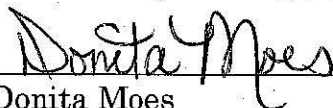
*Page 1 of 3*

6. The legal service for Paula R. Newman, as a paralegal of Austin, Strait, Benson, Thole & Koehn LLP, an attorney for the Appellee, are billed at \$200.00 per hour in this matter.
7. The legal service for Donita Moes, as a legal assistant of Austin, Strait, Benson, Thole & Koehn LLP, an attorney for the Appellee, are billed at \$150.00 per hour in this matter.
8. The legal service for Danice Zweifel, as a legal assistant of Austin, Strait, Benson, Thole & Koehn LLP, an attorney for the Appellee, are billed at \$150.00 per hour in this matter.
9. Each of the foregoing engaged in the efforts in this matter as itemized by the attached Exhibit A.
10. Appellee has, as of June 18, 2025, incurred \$7,338.42 in attorneys' fees, including sales tax, necessarily incurred in prosecuting this civil action.
11. Appellee has, as of June 18, 2025, incurred \$19.60 in costs necessarily incurred in prosecuting this civil action.
12. The total fees and expenses requested is \$7,358.02.

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

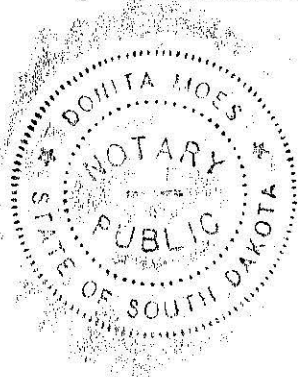
  
\_\_\_\_\_  
Mitchell L. Koehn

Subscribed and sworn before me  
this 18<sup>th</sup> day of June, 2025.

  
\_\_\_\_\_  
Donita Moes

Notary Public - South Dakota

My commission expires: 06/30/29



## CERTIFICATE OF SERVICE

I, Mitchell L. Koehn, hereby certify that on the 18<sup>th</sup> day of June, 2025, I mailed the Affidavit of Mitchell L. Koehn to the Supreme Court at the address below and emailed a Word version of the Affidavit of Mitchell L. Koehn, along with a PDF version to the following address:

Supreme Court Clerk's Office  
500 East Capital Avenue  
Pierre, SD 57201-5070  
[SCClerkBriefs@ujs.state.sd.us](mailto:SCClerkBriefs@ujs.state.sd.us)

I further certify that I mailed one copy of the Affidavit of Mitchell L. Koehn via First-Class United States Mail and an electronic copy via Electronic Mail to the following parties:

Zhi Gang Zhang, Plaintiff, appearing as Pro Se  
2508 Primrose Lane  
Aberdeen, SD 57201  
(612) 270-2859  
[Zhang443@abe.midco.net](mailto:Zhang443@abe.midco.net)

this 18<sup>th</sup> day of June, 2025.

AUSTIN, STRAIT, BENSON,  
THOLE & KOEHN LLP

BY: \_\_\_\_\_

  
Mitchell L. Koehn  
Attorneys at Law  
25 1st Avenue Southwest  
Watertown, SD 57201  
Telephone: 605-886-5823  
[mitch@autinlawsd.com](mailto:mitch@autinlawsd.com)  
*Attorney for Appellee*



# Austin, Strait, Benson, Thole & Koehn LLP

25 First Avenue Southwest  
Watertown, SD 57201  
Phone: (605) 886-5823  
Fax: (605) 653-1303

## INVOICE

Invoice # 382005  
Date: 06/18/2025

Ling Ma  
10028 Gentian Drive  
Eden Prairie, MN 55347

### Statement of Account

Outstanding Balance	New Charges	Amount in Trust	Payments Received	Total Credit
( \$427.58	+ \$7,358.02	) - ( \$10,000.00	+ \$0.00	) = <b>\$2,214.40</b>

Please pay Total Amount Outstanding. Make all amounts payable to: Austin, Strait, Benson, Thole & Koehn LLP.

**102357- Ma- Ma, Ling**  
Civil

### Services

Date	Attorney	Notes	Quantity	Rate	Total	Sales Tax (6.2%)	Total Plus Tax
05/12/2025	MK	SUPREME COURT START HERE:  Receipt and brief review of Zhi Appellant docs; phone call with Supreme Court clerk; discussion with AE re. briefing and deadlines; correspondence with client	0.90	\$250.00	\$225.00	\$13.95	\$238.95
05/13/2025	MK	Discussion with AE re. Brief prep and outline of arguments/ brief; brief review of Appellant's argument	1.00	\$250.00	\$250.00	\$15.50	\$265.50
05/14/2025	AE	Draft preliminary statement and Jurisdictional statement	1.50	\$150.00	\$225.00	\$13.95	\$238.95

EXHIBIT

tabbles

A

05/15/2025	MK	Read Appellant Brief; notes; discussion with AE re. Brief organization and issue spotting	1.80	\$250.00	\$450.00	\$27.90	\$477.90
05/21/2025	MK	Correspondence with client; meeting with AE and DZ to discuss Attorney Fee issue	0.70	\$250.00	\$175.00	\$10.85	\$185.85
05/21/2025	AE	Gather authorities, research, work on brief.	2.50	\$150.00	\$375.00	\$23.25	\$398.25
05/28/2025	MK	Discussion with AE on Supreme court brief; draft issues/work on statement of case/arguments	0.80	\$250.00	\$200.00	\$12.40	\$212.40
05/28/2025	MK	Work on argument section of brief - issues 1, 2, 3, and 4	3.50	\$250.00	\$875.00	\$54.25	\$929.25
05/29/2025	MK	Extensive work on brief: finish argument section; work on: jurisdictional statement; statement of case; statement of facts; legal issues; table of authorities; conclusion; review and research issues; make changes; correspondence with client	7.00	\$250.00	\$1,750.00	\$108.50	\$1,858.50
05/29/2025	AE	SR citations within brief and revising.	2.00	\$150.00	\$300.00	\$18.60	\$318.60
05/30/2025	AE	SR citations, conversation with mitch. Further edits and revisions.	3.00	\$150.00	\$450.00	\$27.90	\$477.90
06/03/2025	PRN	Work on Motion for Appellate Attorneys' Fees and Affidavit of Mitchell L. Koehn.	1.00	\$200.00	\$200.00	\$12.40	\$212.40
06/05/2025	DZ	Review and work on revisions to Appellee's Brief, Table of Contents, Table of Authorities, Statutes and Certificate of Compliance.	4.00	\$150.00	\$600.00	\$37.20	\$637.20
06/06/2025	DM	Review and revise Motion for Appellate's Attorneys' Fees and Affidavit of Mitchell L. Koehn and Certificates of Service.	0.20	\$150.00	\$30.00	\$1.86	\$31.86
06/16/2025	MK	Review final draft of Brief, Motion, and Affidavit; changes	1.00	\$250.00	\$250.00	\$15.50	\$265.50
06/17/2025	DM	Review and revise Appellee's Brief and Certificate of Service; Review and revise Authorities and Statutes; Update Certificate of Compliance; Review and revise Affidavit of Mitchell L.	3.70	\$150.00	\$555.00	\$34.41	\$589.41

Koehn RE: Attorneys' Fees and Motion for Appellate Attorneys' Fees and Certificate of Service; Prepare transmittal letter to Supreme Court Clerk; Prepare transmittal letter to opposing party.

Quantity Subtotal 34.6

Matter Fees \$6,910.00

### Expenses

Date	Notes	Quantity	Rate	Total	Sales Tax (6.2%)	Total Plus Tax
06/17/2025	Photocopies	98.00	\$0.20	\$19.60	\$0.00	\$19.60
Matter Expenses						\$19.60

Time Keeper	Quantity	Rate	Total
Austin Eidahl	9.0	\$150.00	\$1,350.00
Mitchell Koehn	16.7	\$250.00	\$4,175.00
Donita Moes	3.9	\$150.00	\$585.00
Paula Newman	1.0	\$200.00	\$200.00
Danice Zweifel	4.0	\$150.00	\$600.00
Quantity Total			34.6
Matter Subtotal			\$6,929.60
Tax (6.2%)			\$428.42
Total			\$7,358.02

### Detailed Statement of Account

### Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
377596	05/22/2025	\$756.14	\$328.56	\$427.58



**Current Invoice**

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
382005	07/18/2025	\$7,358.02	\$0.00	\$7,358.02
<b>Outstanding Balance</b>				<b>\$7,785.60</b>
<b>Amount in Trust</b>				<b>\$10,000.00</b>
<b>Total Credit</b>				<b>\$2,214.40</b>

**Trust Account**

Date	Type	Notes	Matter	Receipts	Payments	Balance
11/22/2024	Ch	Retainer	102357- Ma- Ma, Ling		\$5,000.00	\$5,000.00
12/03/2024	Check	Retainer	102357- Ma- Ma, Ling		\$5,000.00	\$10,000.00
01/23/2025		Payment for invoice #371139	102357- Ma- Ma, Ling	\$5,449.74		\$4,550.26
02/26/2025		Payment for invoice #373014	102357- Ma- Ma, Ling	\$3,532.24		\$1,018.02
03/26/2025		Payment for invoice #375330	102357- Ma- Ma, Ling	\$689.46		\$328.56
04/29/2025		Payment for invoice #377596	102357- Ma- Ma, Ling	\$328.56		\$0.00
05/20/2025	Check	Retainer	102357- Ma- Ma, Ling		\$5,000.00	\$5,000.00
05/27/2025	Check	Retainer	102357- Ma- Ma, Ling		\$5,000.00	\$10,000.00
<b>Trust Account Balance</b>						<b>\$10,000.00</b>

Please pay within 30 days. 15.0% simple annual interest will be charged every 31 days.

JUL 18 2025

*Shirley A. Johnson-Lopez*  
Clerk

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

ZHI GANG ZHANG,

Appellant

v.

LING MA

Appellee

**MOTION FOR  
SANCTION & COSTS**

#31036  
(06Civ. 24-000534)

Pro Se Appellant Zhi Gang Zhang files a motion for sanctions and cost reimbursement in accordance with SDCL § 15-6-11(c). SDCL § 15-17-51. Appellant/Zhang previously filed a Rule 11(c) motion (Clerk Index page 96) that was not considered by the trial court. The same facts remain; additionally, Mr. Koehn's intentionally false statements to the trial court and this court appear to be "wilfully blind to the truth, or (is) in reckless disregard for the truth," as briefed in appellant/Zhang's reply brief. Therefore, Mr. Koehn's conduct seems consistent with a "fraud on the court". This court could make the corresponding determination.

**1. Mr. Koehn has been untruthful to both the trial court and this Court**

From Mr. Koehn's appellee's brief, it is clear that he is deliberately using the "red herring fallacy" tactic to divert attention from the facts and applicable laws to mislead both the trial court and this Court. At the time of the motion to dismiss alone, Appellant/Zhang initially believed the deficiencies in Mr. Koehn's filing were solely due to a negligent misunderstanding of relevant laws and rules, which prompted a reminder to him on December 18, 2024.

Mr. Koehn's appellee's brief consistently employs the red herring fallacy deliberately and systematically, along with untruthful assertions to the courts, as a tactic to oppose a pro se litigant (see Appellant's Reply Brief, Pages 1-17). Notably, he boldly claimed the "fraud on the court," which is the central issue in the complaint, as a "new issue" raised for the first time in his appellee's brief. (see Appellee's Brief, Page 19, ¶VI).

Mr. Koehn's false claim that Zhang filed six proceedings "to stop alimony payments" with the trial court has already influenced the legal process, thereby prejudicing the Appellant/Zhang. Mr. Koehn's additional false statement in the appellee's brief (see Appellant's reply brief) also demonstrates the same malicious intent.

**2. Mr. Koehn's other untruthful statements to the Appellate court in the appellee's brief that were not addressed in the Appellant's reply brief.**

1, "Zhang already had an opportunity to object to Ma's attorneys' fees request in his pleadings, which he did, and at the hearing---, included an award of attorney's fees on behalf of Ma in its Order." Appellee's brief page 19

Counter:

How could the Appellant/Zhang have objected to something filed and heard several months after he filed his pleading? Zhang filed his pleading on September 24, 2024. The motion to dismiss was filed on December 4, 2024. The hearing transcript confirms that Mr. Koehn's attorney fee request was made after the trial court specifically stated that the Appellant/Zhang could not speak anymore, and Zhang had followed the court's order.

Where can Mr. Koehn find a single word that the Appellant/Zhang had said during or after he made his attorney fee request in the hearing? In fact, his attorney's fee request was made after the court had already announced that the hearing was over (Clerk Index 176 original page 16:14-17:7). Mr. Koehn should not forget this fact, or at least he could use the hearing transcript to remind himself of it.

His attorney's fee is disproportional to the work done by his mechanically using an unfit preformed universal template (this court could review accordingly).

2, "The Affidavit was also filed. However, Ma's counsel also provided an itemized statement directly to the Circuit Court. Ma's counsel did not provide the statement to Zhang directly because the statement is riddled with confidential information and attorney work product. Zhang has used these records in the past to bring lawsuits against Ma's counsel and for other malicious reasons."

Counter:

The court filing is supposed to be open to the public. Did Mr. Koehn file any special request with the court to seal his filing? Has Mr. Koehn notified the Appellant/Zhang of this special requirement to follow court rules? Furthermore, can Mr. Koehn provide any evidence to support his allegation "Zhang has used these records in the past to bring lawsuits against Ma's counsel"? His statement appears to be made spontaneously to cover his rule-breaking activity. It once again showed his lack of candor towards the tribunal.

3. "First, Ma's counsel filed an Affidavit of Defendant's Attorney Regarding Attorney's Fees on February 19, 2025. SR 169-170. Included in that document is a Certificate of Service, ---"

Counter:

The court requested, "You can submit your affidavit and fees and serve them upon him, and I'll make a ruling on that---"

Mr. Koehn filed his affidavit with the trial court on February 19, as described above by him. The court order was made and signed on February 26 and provided to Zhang on February 27. Mr. Koehn provided the affidavit on March 3 after the Appellant/Zhang made the request (see attachment 1), after the Appellant/Zhang requested it on March 2, 2025. Mr. Koehn's service was 12 days after his court filing (see attachment 2).

The Mail could be lost on the route. Appellant/Zhang is requesting that Mr. Koehn provide the evidence of the email sent to Zhang on February 19 or even later before February 27, 2025. If there is service made to Zhang, Zhang will apologize accordingly for accusing him wrongfully, because Zhang had not received either mail or email, which is why he made the corresponding request on March 2, 2025. Otherwise, Mr. Koehn is making a "fake certificate of service" to the trial court and is deceiving this court.

4 " Every day since then, Zhang has rifled various lawsuits, motions, pleadings, etc. at Ma seeking a modification or vacation of the spousal order. Ma has constantly been subjected to the South Dakota judicial system, even though she has long since moved. In each and every instance, Zhang is unsuccessful". (Appellee Brief Page 16)

Counter:

First, Appellant/Zhang does not know how he can “rifled” various lawsuits, etc.

Second, how would Appellant/Zhang suing anyone other than Ma affect Ma or make her subject to the judicial system, since she was not even called as a witness in any other proceedings or received anything other than alimony from Zhang or the court, except for the alimony modification attempt of 2016? It will only be Appellant/Zhang who has to endure and relive the suffering from the “fraud on the court” during the proceedings.

“By eliciting false testimony, introducing in evidence false documents, and failing to correct the record when he had the opportunity to do so, the respondent perpetrated a fraud on a tribunal” *In re McCarthy*, 623 N.E.2d 473,477 (Mass. 1993).

Mr. Koehn was given ample time and multiple opportunities to correct the documents he submitted to the court, yet he failed to follow the ethically required steps outlined by ABA standards. Instead, he increased his use of red herring arguments in the appellee’s brief, attempting to further mislead the Court.

As *John T. Kolinski* explains in his *Fraud on the Court as a Basis for Dismissal with Prejudice or Default: An Old Remedy Has New Teeth*, *The Florida Bar Journal*, Vol. 78, No. 2, at Page 16 (February 2004):

The requisite fraud on the court occurs where “it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party’s claim or defense.” *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989). . . . The integrity of the civil litigation process depends on truthful disclosure of facts. A system that depends on an adversary’s ability to uncover falsehoods is doomed to failure, which is why this kind of conduct must be discouraged in the strongest possible way.

Courts throughout this state have repeatedly held “that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends.” *Metropolitan Dade County v. Martinsen*, 736 So. 2d 794, 795 (Fla. 3d DCA 1999).

A motion to dismiss the complaint with prejudice or to default defendant should not be overlooked as a means of dealing with egregious litigation misconduct. As the decisions cited herein demonstrate, dismissal with prejudice and default for fraud on the court are viable and achievable remedies in the appropriate case.

This Court has the authority to evaluate Mr. Koehn’s reckless disregard for the facts and law, his untruthfulness to the tribunals during court proceedings and filings, and then assign responsibility for such conduct accordingly.

### **3. Mr. Koehn engaged in “Rambo lawyering” during the present legal proceeding.**

1. Failed to comply with the court’s order (Appellant Brief Page 34) and, instead, threatened the Appellant with consequences for not following an order he had drafted (attachments 3). The version of the court order prepared by Mr. Koehn contained a clear defect, caused by his mechanical use of a pre-formatted template (Clerk Index 171).
2. Failed to adhere to the basic standards of reasonable legal research as required by Rule 11(b), instead blatantly ignoring the facts and applicable laws clearly stated in the complaint (Clerk Index 96).
3. Repeatedly and openly used red herring fallacies to divert from the issues raised by the pro se litigant in his court filings, disregarding professional standards and ethical obligations in his court documents (Appellant Reply Brief).
4. Made a false statement to the Court with malicious intent, causing prejudice against the Appellant/Zhang's properly filed case and effectively obstructing the “fraud on the court”

claim to date (Supra at page 2). The untruthful statements continued in the appellee's brief as stated above.

Mr. Koehn's inconsistent versions of the attorney fees statement in his appellee brief, which attempt to obscure the "no payment needed" hearing result documented in the court record, either reflect a pattern of habitual behavior or suggest a deliberate effort to hide the truth from his client for his own benefit (Attachments 4 and 5; Appellant's Reply Brief, Page 18, section 5). (Clerk Index 220, Op3:24-25, Op4:20-22).

As outlined in Appellant/Zhang's reply brief, there are five criteria for determining fraud on the court. Mr. Koehn's conduct meets all the requirements to be considered as having committed fraud on the court. Default liability is usually assigned to the defendant/appellee; however, the default proceeding is traditionally not conducted in this court. Therefore, Appellant/Zhang will need further guidance from this court on this issue.

Therefore, this motion for sanctions and costs is filed while awaiting further guidance from the court on the default-related issue. The court can assign Mr. Koehn's other professional responsibilities accordingly, especially as Mr. Koehn can clear himself by providing the documents that were mentioned as lacking in this motion.

According to SDCL §15-6-11(c), although a pro se litigant does not incur traditional attorney fees, the Plaintiff has faced significant expenses in preparing the current filing and responding to the Defendant's frivolous court submissions. A somewhat



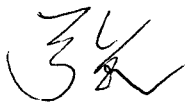
unique aspect of this case is that Appellant/Zhang is not proficient in English, having learned it as a second language later in life. Therefore, Appellant/Zhang relies on additional support to manage the challenging task he was unintentionally pulled into, such as needing help in proofreading drafts and needing assistance with electronic tools for drafting and research.

Thus, the Plaintiff respectfully requests that the appropriate sanctions and cost reimbursement be imposed on Mr. Mitchell L. Koehn, or his law firm, pursuant to SDCL §15-6-11(c), to uphold the principle and deter similar conduct in the future. The Plaintiff requests reimbursement of the direct costs incurred so far in this filing, including:

- Proofreading expenses for the briefs and motions (Upwork, current bill pending)
- Subscription fees for digital tools related with the current filing;
- Additional direct costs incurred related to this filing, as allowed by the statute;
- Compensation for enlarged alimony payments as a direct result of time lost during this proceeding due to Mr. Koehn's frivolous court filings
- Any other sanctions deemed appropriate by this court

Additionally, to somewhat balance the heavily skewed battleground, requiring Mr. Koehn or his law firm to pay for the use of "Westlaw Precision with CoCounsel" would further support the principle of deterrence under SDCL 15-6-11( c ).

Zhi Gang Zhang.



July 18, 2025

AFFIDAVIT OF SERVICE

I, Zhi Gang Zhang, Pro Se Appellant/PLAINTIFF, certify that on July 18, 2025, the above document, which was filed with the clerk of Supreme Court of South Dakota, was served to Defendant by E-mailing and by first class mail to:

Mr. Mitchell L. Koehn E-mail address: mitch@austinlawsd.com Mailing Address: 25  
First Ave SW, Watertown, SD 57201

Signature,

A handwritten signature in black ink, appearing to be 'ZG' followed by a stylized flourish.

Zhi Gang Zhang

July 18, 2025

From:	zhang443@abe.midco.net
To:	Danice Zweifel <danice@austinlawsd.com>
CC:	Mitch Koehn <mitch@austinlawsd.com>
Date:	Sun, Mar 2, 2025 03:41 PM
Subject:	Re: Order and Letter

Mr. Koehn:

The court transcript on February, 14, 2025 stated " All right. You can submit your affidavit and fees and serve them upon him, and I'll make a ruling on that and they can be included in the order."

Till today, I have not received your affidavit or detailed billing that can back up your claimed attorney fees.

The Plaintiff should have reviewed all those first as per the judge stated and to make corresponding objection as needed, then judge will make the final verdict or orders.

I do not think you have followed the proper procedure as the judge told you to.

Please respond to this matter as early as possible and provide the related documentation as required by the Judge to avoid further confusion.

Respectfully,

Zhi Gang Zhang

On Thu, Feb 27, 2025 at 01:54 PM, Danice Zweifel <danice@austinlawsd.com> wrote:

From:	Mitch Koehn <mitch@austinlawsd.com>
To:	"zhang443@abe.midco.net" <zhang443@abe.midco.net>, Danice Zweifel <danice@austinlawsd.com>
Date:	Mon, Mar 3, 2025 08:31 AM
Subject:	RE: Order and Letter
Attachments:	06CIV24-000534_ORDER.pdf, Affidavit of Defendant's Attorney Regarding Attorney's Fees.pdf

Zhi,

Please see attached the Affidavit of attorneys fees that was filed with the court and served upon you. I do not have to provide you with a detailed billing that can "back up [my] claimed attorney fees." All that I am required to do is submit an Affidavit to the Judge regarding attorneys fees, include a statement for his review, and if the judge signs the order awarding the fees, they are to be paid.

You also were not allowed a time for a 2<sup>nd</sup> objection on my attorney fee request. You had the opportunity to object to my attorney fee request at the hearing, and you did not make an argument. The Judge subsequently ruled in our favor.

If you don't think I followed the proper procedure, please feel free to file whatever motion or argument you would like. However, I will be requesting additional attorneys fees inside of any additional motions or challenges.

I simply wanted to provide you with notice that I would give you 30 days to pay the attorneys fees so I do not take out a judgment against you, file a contempt motion, etc., damaging your credit and other headache. I was attempting to be courteous.

## Attachment 2

Sincerely,



Mitchell L. Koehn

Austin, Strait, Benson, Thole & Koehn LLP

25 First Avenue Southwest

Watertown SD 57201

Phone: 605-886-5823

Fax: 605-653-1303

e-mail: [mitch@austinlawsd.com](mailto:mitch@austinlawsd.com)

website: [austinlawsd.com](http://austinlawsd.com)

**This Electronic Mail (e-mail) contains confidential and privileged information intended only for the use of the individual or entity to which it is sent. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivery to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by reply e-mail or telephone.**

**From:** zhang443@abe.midco.net <zhang443@abe.midco.net>

**Sent:** Sunday, March 2, 2025 3:42 PM

**To:** Danice Zweifel <danice@austinlawsd.com>

**Cc:** Mitch Koehn <mitch@austinlawsd.com>

**Subject:** Re: Order and Letter

Mr. Koehn:

The court transcript on February, 14, 2025 stated " All right. You can submit your affidavit and fees and serve them upon him, and I'll make a ruling on that and they can be included in the order."

**AUSTIN, STRAIT, BENSON,  
THOLE & KOEHN LLP**

*A Registered Limited Liability Partnership*  
ATTORNEYS AT LAW  
25 FIRST AVENUE S.W.  
WATERTOWN, SOUTH DAKOTA 57201  
TELEPHONE (605) 896-3433  
FAX (605) 811-1303

DAVID R. STRAIT  
GARY M. BENSON  
AMANDA M. THOLE  
MITCHELL L. KOEHN

BERNICE MORLOCK DEWIS  
SIOBHAN M. MARLEY

**VIA EMAIL AND FIRST-CLASS MAIL**

February 27, 2025

Zhi Gang Zhang  
2508 Primrose Lane  
Aberdeen, SD 57401  
[Zhang443@abc.midco.net](mailto:Zhang443@abc.midco.net)

RE: Zhi Gang Zhang v. Ling Ma – 06CIV24-000534

Dear Mr. Zhang:

Please find enclosed a copy of the Order that the Judge signed on February 26, 2025. Per the Order of the Court, you are required to repay Ling Ma \$8,981.98 as reimbursement for her attorney's fees. As long as payment is received within 30 days of the date of this letter, we will not proceed with a Motion for Contempt or seek a Judgment against you.

You may either make payment in one of the following ways:

- (1) Make a check payable to Ling Ma, and deliver said check to our office at the address above, or
- (2) Make a check payable to Austin Law Office, and deliver said check to our office at the address above.

Should you have any questions or concerns regarding the foregoing, please let me know.

Very truly yours,

*Mitchell L. Koehn*

Mitchell L. Koehn  
[mitch@austinelawsd.com](mailto:mitch@austinelawsd.com)

MLK/dz  
Enc.

Attachment 3

From:	Mitch Koehn <mitch@austinlawsd.com>
To:	"Bobzien, Susan" <susan.bobzien@ujs.state.sd.us>, "zhang443@abe.midco.net" <zhang443@abe.midco.net>
CC:	"Young, Rebecca (UJS)" <rebecca.young@ujs.state.sd.us>, "Sommers, Judge Richard" <richard.sommers@ujs.state.sd.us>, "Zahn, Sara" <sara.zahn@ujs.state.sd.us>
Date:	Thu, Mar 27, 2025 12:28 PM
Subject:	RE: 06CIV24-534

Your Honor,

I apologize for the email following the hearing this morning. Unfortunately, with the technical difficulties, I was unable to hear most of the hearing. I was also unaware for the purpose of the hearing. I thought it was to address Zhang's claim that attorneys fees were not discussed at our hearing a few months ago. I was unaware that it was in relation to issues regarding Zhang's posting of the necessary bonds for appeal with the Clerk's Office.

I don't know if the Court is willing to accept discussion/argument via email, but I will submit the following, and if the Court would like me to detail this argument in a Motion before the Court, I can.

I do not believe Zhang can stay the execution of the Court's prior order simply by filing the Notice of Appeal. In order to stay execution pending appeal, a corporate or personal surety bond must be filed and approved pursuant to SDCL 15-26A-25, or the appellant must deposit cash in an amount equal to the undertaking, pursuant to SDCL 15-26A-41. If one is not posted, SDCL 15-26A-25 specifically states that the appeal "shall not stay enforcement of proceedings in the circuit court."

Both statutes, and most of SDCL 15-26A, refer to both "judgment(s) or order(s)." I do not believe that just because the Order was not docketed as a "Judgment" against the Plaintiff means that he can avoid, or disregard, the court's underlying order during the pendency of the appeal. I believe the Plaintiff is required to post the bond, or comply with the terms of the order, i.e., reimburse my client directly. Which, may be a worthwhile suggestion to the Plaintiff because if he opts for posting the bond with the Clerk, it is subject to a 10% interest during the pendency of the appeal.

In short, I believe Zhang is required to either: (1) comply with the underlying order, and if successful on appeal, my client would be required to reimburse the Plaintiff, or (2) post the necessary supersedeas bond, i.e., the \$8,981.98, with the Clerk in order to stay the current order.

I apologize I was unable to articulate that argument at the hearing this morning due to the reasons stated above.

Sincerely,

Mitchell L. Koehn

about:blank

1/4

## Attachment 4



Austin, Strait, Benson, Thole & Koehn LLP

25 First Avenue Southwest

Watertown SD 57201

Phone: 605-886-5823

Fax: 605-653-1303

e-mail: [mitch@austinlawsd.com](mailto:mitch@austinlawsd.com)

website: [austinlawsd.com](http://austinlawsd.com)

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**From:** Bobzien, Susan <[Susan.Bobzien@ujs.state.sd.us](mailto:Susan.Bobzien@ujs.state.sd.us)>  
**Sent:** Wednesday, March 26, 2025 11:04 AM  
**To:** Mitch Koehn <[mitch@austinlawsd.com](mailto:mitch@austinlawsd.com)>; zhang443@abe.midco.net  
**Cc:** Young, Rebecca (UJS) <[rebecca.young@ujs.state.sd.us](mailto:rebecca.young@ujs.state.sd.us)>; Sommers, Judge Richard <[Richard.Sommers@ujs.state.sd.us](mailto:Richard.Sommers@ujs.state.sd.us)>; Zahn, Sara <[Sara.Zahn@ujs.state.sd.us](mailto:Sara.Zahn@ujs.state.sd.us)>  
**Subject:** RE: 06CIV24-534

Thank you.

**From:** Mitch Koehn <[mitch@austinlawsd.com](mailto:mitch@austinlawsd.com)>  
**Sent:** Wednesday, March 26, 2025 11:03 AM  
**To:** Bobzien, Susan <[Susan.Bobzien@ujs.state.sd.us](mailto:Susan.Bobzien@ujs.state.sd.us)>; zhang443@abe.midco.net  
**Cc:** Young, Rebecca (UJS) <[rebecca.young@ujs.state.sd.us](mailto:rebecca.young@ujs.state.sd.us)>; Sommers, Judge Richard <[Richard.Sommers@ujs.state.sd.us](mailto:Richard.Sommers@ujs.state.sd.us)>; Zahn, Sara <[Sara.Zahn@ujs.state.sd.us](mailto:Sara.Zahn@ujs.state.sd.us)>  
**Subject:** RE: [EXT] 06CIV24-534

I am available for the hearing.



From:	zhang443@abe.midco.net
To:	Mltch Koehn <mltch@austinlawsd.com>
CC:	"Bobzien, Susan" <susan.bobzien@uj.s.state.sd.us>, "Young, Rebecca (UJS)" <rebecca.young@uj.s.state.sd.us>, "Sommers, Judge Richard" <richard.sommers@uj.s.state.sd.us>, "Zahn, Sara" <sara.zahn@uj.s.state.sd.us>
Date:	Thu, Mar 27, 2025 01:21 PM
Subject:	Objection for the attorneys excuses on Re[2]: 06CIV24-534

Your Honor:

If an attorney could change your Honor's court hearing like this, then Plaintiff will correspondingly request the deficiency of the order to be reviewed.

Mr. Koehn did not serve his affidavit as your Honor ordered on February 14, 2025. When the Plaintiff asked him to provide the affidavit, Mr. Koehn provided the affidavit to the Plaintiff on March 3, 2025, after the order had already been signed.

The court ordered that the Plaintiff could not speak any further and halted the Plaintiff's Objection. However, it was after this that Mr. Koehn added the attorney fee, given the circumstances where Your Honor had ordered that the Plaintiff could not speak any more.

Mr. Koehn did not give the Plaintiff any opportunity to object to his draft as he should have, and he included a frivolous assignment on the Plaintiff's filing in the final order that could not be found in the hearing.

Additionally, the Plaintiff requested an itemized statement for his \$8,981.98 attorney fee, which he refused. Mr. Koehn made only one cookie-cutter motion without conducting any basic research on Google, which showed that his motion lacks any ground for personal jurisdiction and other arguments. He submitted two pages of objections to the two motions filed by the Plaintiff. The attorney fee submitted is disproportionately high compared to the work performed. According to Am. Legion Homes Ass'n Pos 22 v. Pennington Cnty. 2018 S.D., 919 N.W. 2d 346, an itemized statement is required to evaluate the "reasonableness" of the fee to avoid abuse of the system.

Mr. Koehn could have avoided all the trouble from the beginning by following rule 11(b) to conduct a reasonable inquiry in determining personal jurisdiction based on the Plaintiff's case of Zhi Gang Zang v. Rasmus, thereby alleviating the burden on the court and the Plaintiff.

There are additional reasons for the court to consider the Rule 11 (c) motion filed by the Plaintiff. Moreover, Mr. Koehn did not even bother to file an opposition to the Plaintiff's rehearing petition. This is an obvious abuse of the legal system and ignore the court rules

Sincerely,

about:blank

2/8

Zhi Gang Zhang

On Thu, Mar 27, 2025 at 12:28 PM, Mitch Koehn  
<mitch@austinlawsd.com> wrote:

Your Honor,

I apologize for the email following the hearing this morning. Unfortunately, with the technical difficulties, I was unable to hear most of the hearing. I was also unaware for the purpose of the hearing. I thought it was to address Zhang's claim that attorneys fees were not discussed at our hearing a few months ago. I was unaware that it was in relation to issues regarding Zhang's posting of the necessary bonds for appeal with the Clerk's Office.

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Sincerely,



Mitchell L. Koehn

Austin, Strait, Benson, Thole & Koehn LLP

25 First Avenue Southwest

Watertown SD 57201

Phone: 605-886-5823

Fax: 605-653-1303

e-mail: [mitch@austinlawsd.com](mailto:mitch@austinlawsd.com)

website: [austinlawsd.com](http://austinlawsd.com)

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IN THE SUPREME COURT  
OF SOUTH DAKOTA

ZHI GANG ZHANG, Appellant,  vs.  LING MA, Appellee.	No. 31036   OBJECTION TO APPELLANT'S MOTION FOR SANCTION & COSTS
---	--

COMES NOW, the above-named Appellee, by and through her undersigned counsel, Mitchell L. Koehn, and hereby objects to the Appellant's Motion for Sanction & Costs on the following grounds:

Appellant is, again, attempting to assert new issues, facts, and other evidence/arguments. Appellant is arguing Appellee's counsel committed "fraud on the court" via the Appellee's Brief. Appellee is unsure how fraud on the Court could even be effectuated simply by presenting arguments to the Court, especially written arguments. Appellee's counsel asserted all representations, arguments, and facts to the best of his knowledge and with a proper purpose. In addition, all arguments and contentions submitted by Appellee are not "red herring fallacies," but rather logical arguments supported by South Dakota case law.

*Zhi Zhang v. Ling Ma*  
*Appeal No. 31036*  
*Objection to Appellant's Motion for Sanction & Costs*  
*Page 1 of 3*

The Appellee respectfully requests that this Court deny the Appellant's Motion for Sanction and Costs.

Dated this 24<sup>th</sup> day of July, 2025.

AUSTIN, STRAIT, BENSON  
THOLE & KOEHN LLP

BY: 

Mitchell L. Koehn  
*Attorney for Appellee*  
25 First Avenue Southwest  
Watertown, SD 57201  
Telephone: 605-886-5823  
[mitch@autinlawsd.com](mailto:mitch@autinlawsd.com)

CERTIFICATE OF SERVICE

I, Mitchell L. Koehn, hereby certify that on the 24<sup>th</sup> day of July, 2025, I mailed the Objection to Appellant's Motion for Sanction & Costs to the Supreme Court at the address below and emailed a Word version of the Objection to Appellant's Motion for Sanction & Costs, along with a PDF version to the following address:

Supreme Court Clerk's Office  
500 East Capital Avenue  
Pierre, SD 57201-5070  
[SCClerkBriefs@ujs.state.sd.us](mailto:SCClerkBriefs@ujs.state.sd.us)

I further certify that I mailed one copy of the Objection to Appellant's Motion for Sanction & Costs via First-Class United States Mail and an electronic copy via Electronic Mail to the following parties:

Zhi Gang Zhang, Plaintiff, appearing as Pro Se  
2508 Primrose Lane  
Aberdeen, SD 57201  
(612) 270-2859  
[Zhang443@abe.midco.net](mailto:Zhang443@abe.midco.net)

*Zhi Zhang v. Ling Ma*  
*Appeal No. 31036*  
*Objection to Appellant's Motion for Sanction & Costs*  
*Page 2 of 3*

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

AUSTIN, STRAIT, BENSON,  
THOLE & KOEHN LLP

BY: \_\_\_\_\_



Mitchell L. Koehn  
*Attorney for Appellee*  
25 1st Avenue Southwest  
Watertown, SD 57201  
Telephone: 605-886-5823  
[mitch@autinlawsd.com](mailto:mitch@autinlawsd.com)