

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2021 MTWCC 3

WCC No. 2020-5145

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MICHAEL MILLER

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

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**APPEALED TO MONTANA SUPREME COURT – DA 21-0120 – MARCH 15, 2021  
AFFIRMED - 2021 MT 187N - JULY 27, 2021**

**ORDER:**

- (1) DENYING PETITIONER'S MOTION REQUESTING THE COURT TO ALTER OR AMEND JUDGMENT [IN] WCC NO. 2000-0059;**
- (2) GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT;**
- (3) CERTIFYING JUDGMENTS AS FINAL; AND**
- (4) GIVING NOTICE OF ENTRY OF FINAL JUDGMENT**

**Summary:** Pursuant to a full and final settlement Petitioner and Respondent reached at a settlement conference in 2001, this Court entered a judgment. Petitioner now seeks relief from the judgment under M.R.Civ.P. 60(b) on the grounds of mistake, newly discovered evidence, and fraud, misrepresentation, and misconduct. He also makes an independent claim to set aside the judgment, alleging fraud upon this Court. Respondent moved for summary judgment, asserting that Petitioner's motion for relief from the judgment is time-barred and that Petitioner has not presented any evidence of fraud upon this Court.

**Held:** This Court denied Petitioner's motion for relief from the judgment because he did not make his motion within a reasonable time and his motion is time-barred by the 60-day statute of limitations in the 2001 version of Rule 60(b). This Court granted summary judgment to Respondent on Petitioner's independent claim to set aside the judgment

because Petitioner has not presented any evidence supporting his claim of fraud upon this Court.

¶ 1 Pursuant to an agreement reached at a settlement conference in 2001 and memorialized in a Stipulation of Parties filed in *Miller v. Montana State Fund*, WCC No. 2000-0059 – which included an agreement that this Court would enter a judgment – this Court adjudged that Petitioner Michael Miller and Respondent Montana State Fund (State Fund) had fully and finally settled Miller’s 1983 injury claim. Miller filed this case in 2020 and now moves under M.R.Civ.P. 60(b) for relief from that judgment.<sup>1</sup> Miller also makes an independent claim to set aside the judgment on the grounds of fraud upon this Court.

¶ 2 State Fund opposes Miller’s motion and moves for summary judgment on the grounds that Miller’s motion is time-barred by the 60-day statute of limitations in the 2001 version of Rule 60(b). State Fund also asserts that Miller has not presented any evidence of fraud upon this Court.

¶ 3 As set forth below, Miller’s motion for relief from this Court’s June 14, 2001, judgment is time-barred. And, Miller has not set forth any evidence of fraud upon this Court. Accordingly, this Court denies Miller’s motion for relief from the June 14, 2001, judgment and grants State Fund’s Motion for Summary Judgment.

#### PROCEDURAL HISTORY AND FACTS

¶ 4 On October 23, 1983, Miller suffered a closed-head injury in the course of his employment.

¶ 5 State Fund accepted liability for Miller’s claim.

¶ 6 On September 20, 1988, Miller and State Fund reached a compromise settlement agreement over their disputes as to the amount of benefits that State Fund owed and would owe, leaving medical benefits open. The settlement provided that State Fund would pay Miller \$132,145.10 in a lump sum, the purpose of which was to allow him to purchase a small ranch and be self-employed.<sup>2</sup>

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<sup>1</sup> Miller should have filed a motion in WCC No. 2000-0059. See, e.g., *Loney v. Milodragovich, Dale & Dye, P.C.*, 273 Mont. 506, 511, 905 P.2d 158, 161-62 (1995) (in an independent action, refusing to address plaintiff’s argument that he was entitled to relief under Rule 60(b)(4) on the grounds that judgment was void because, “A party seeking relief from a final order or judgment can file either a motion for relief based on one of the subsections of Rule 60(b) or an independent action . . .”). However, because Miller is a self-represented litigant, and for reasons of judicial economy, this Court will address his request for relief under Rule 60(b) in this case, as was done in *State Comp. Ins. Fund v. Chapman*, 267 Mont. 484, 885 P.2d 407 (1994). See also 7 JAMES WM. MOORE ET AL., *MOORE’S FEDERAL PRACTICE* ¶ 60.31 (2d ed. 1985) (“[A] proceeding for relief under 60(b) may in an appropriate case be treated as an independent proceeding, and similarly an independent action may be treated as a proceeding under 60(b).”).

<sup>2</sup> *Miller v. State Comp. Ins. Fund*, 1999 MTWCC 21, ¶¶ 9, 10.

¶ 7 On November 4, 1988, the Department of Labor & Industry approved their settlement.<sup>3</sup>

¶ 8 On August 3, 1998, Miller filed a case against State Fund in which he sought rescission of the 1988 settlement agreement on the grounds of mistake of fact. He alleged that they were mistaken as to his physical ability to work on the ranch. This Court ruled that Miller's claim was time-barred under the two-year statute of limitations for claims based upon mistake of fact in § 27-2-203, MCA.<sup>4</sup>

¶ 9 On January 27, 2000, the Montana Supreme Court affirmed this Court's ruling.<sup>5</sup>

¶ 10 On March 29, 2000, Miller filed his second case against State Fund. He sought a lump sum of his future medical benefits and rescission of the 1988 settlement agreement on the grounds of mistakes of fact and mistakes of law.<sup>6</sup> *Inter alia*, Miller again alleged that they were mistaken as to his physical ability to work on the ranch and also alleged that this Court and the Montana Supreme Court had erred in ruling that his claim was time-barred.<sup>7</sup> Miller also alleged that State Fund was operating under mistakes of law when evaluating his claim for settlement in 1988 because: (1) it did not consider cost-of-living adjustments (COLAs); (2) it considered the social security offset even though he was not then receiving social security benefits; (3) it considered the cost to purchase an annuity that would pay his future benefits as an indication of settlement value, which Miller asserts is unlawful; and (4) it reduced its calculation of the value of Miller's future benefits to present value, which Miller asserts is unlawful.<sup>8</sup>

¶ 11 Prior to trial, this Court issued its Order Governing Further Proceedings, in which it clarified the claims to be tried.<sup>9</sup> Because Miller brought the same mistake of fact claim that he brought in his first case against State Fund, this Court ruled that this claim was barred by *res judicata*.<sup>10</sup> This Court also ruled that State Fund was not operating under a mistake of law by not considering COLAs because a claimant was not entitled to COLAs under the 1983 Workers' Compensation Act.<sup>11</sup> This Court ruled that Miller could proceed to trial on his claim to lump sum his future medical benefits and his other claims that State

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<sup>3</sup> *Miller v. State Comp. Ins. Fund*, Mont. Dep't of Labor & Indus., Workers' Comp. Div., Case No. 3-84-04564-7 (Order Approving a Full and Final Compromise Settlement (Total Disability) (Nov. 4, 1988)).

<sup>4</sup> *Miller v. State Comp. Ins. Fund*, 1999 MTWCC 21, ¶ 27.

<sup>5</sup> *Miller v. State Comp. Ins. Fund*, 2000 MT 19N, 299 Mont. 544, 4 P.3d 1218.

<sup>6</sup> *Miller v. State Comp. Ins. Fund*, WCC. No. 2000-0059, Docket Item No.1 (Mar. 29, 2000).

<sup>7</sup> *Miller v. State Comp. Ins. Fund*, 2000 MTWCC 72, ¶¶ 20-21, 33-34, 46-49 (WCC. No. 2000-0059, Docket Item No. 30) (Order Governing Further Proceedings) (Nov. 17, 2000).

<sup>8</sup> *Miller v. State Comp. Ins. Fund*, 2000 MTWCC 72, ¶¶ 22-28, 31-32.

<sup>9</sup> *Miller v. State Comp. Ins. Fund*, 2000 MTWCC 72, ¶¶ 21, 34, 47, 49.

<sup>10</sup> *Miller*, 2000 MTWCC 72, ¶¶ 20-21.

<sup>11</sup> *Miller*, 2000 MTWCC 72, ¶¶ 31-32.

Fund was operating under mistakes of fact and mistakes of law when evaluating his claim for settlement.<sup>12</sup>

¶ 12 Miller's second case against State Fund proceeded to trial. On May 14, 2001, this Court issued its Findings of Fact, Conclusions of Law, and Judgment.<sup>13</sup> This Court ruled that it did not have jurisdiction to order State Fund to lump sum Miller's future medical benefits and, even if it had jurisdiction to do so, that Miller was not entitled to a lump sum of his future medical benefits.<sup>14</sup> This Court also ruled that Miller's mistake of fact and mistake of law claims to rescind the 1988 settlement agreement were barred by *res judicata* because Miller could have brought these claims in his first case against State Fund.<sup>15</sup> However, this Court took "evidence on the merits of all matters raised by claimant which state claims, regardless of whether *res judicata* is applicable, so that a complete record is made."<sup>16</sup> Based on this evidence, this Court ruled that State Fund was not operating under mistakes of fact or law when it evaluated Miller's claim for settlement in 1988, which was not for a lump sum payment of undisputed permanent total disability benefits under § 39-71-741, MCA (1983); instead, it was a disputed liability settlement based on their dispute as to whether Miller was permanently totally disabled.<sup>17</sup>

¶ 13 In June 2001, Miller, his wife, and his former employer, who supported Miller, and State Fund attended a settlement conference, with this Court's hearings examiner serving as settlement master. Miller and State Fund reached a second settlement agreement to settle all their disputes over Miller's 1983 injury claim.

¶ 14 After the settlement conference, State Fund's attorney mailed Miller the proposed settlement documents. State Fund's attorney's letter states, in relevant part:

Dear Mr. Miller:

Enclosed are the original **Stipulation of Parties** and a copy of the proposed Judgment and Order. Please review the Stipulation and if you find it acceptable: 1) sign the Stipulation on the second page, 2) obtain your wife's signature also, and 3) mail the Stipulation back to me in the enclosed self-addressed stamped envelope. I will then forward it on to the Worker's Compensation Court for the judge's approval.<sup>18</sup>

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<sup>12</sup> *Miller*, 2000 MTWCC 72, ¶¶ 22-28, 52.

<sup>13</sup> *Miller v. State Comp. Ins. Fund*, 2001 MTWCC 21.

<sup>14</sup> *Miller*, 2001 MTWCC 21, ¶¶ 34-44, 80-83, 90.

<sup>15</sup> *Miller*, 2001 MTWCC 21, ¶¶ 2, 11, 77.

<sup>16</sup> *Miller*, 2001 MTWCC 21, ¶ 5.

<sup>17</sup> *Miller*, 2001 MTWCC 21, ¶¶ 15-29, 78.

<sup>18</sup> Emphasis in original.

¶ 15 Thereafter, Miller and his wife signed the Stipulation of Parties and returned it to State Fund. State Fund's attorney signed it and filed it with this Court. The Stipulation of Parties provides that they reached "a full and final compromise settlement of all issues arising from Petitioner's injury on October 23, 1983, including those in WCC No. 2000-0059" and to "fully and finally compromis[e] all benefits payable under the Workers' Compensation and/or Occupational Disease Acts, including but not limited to medical, rehabilitation, wage loss and indemnity benefits."<sup>19</sup> For its part of the settlement, State Fund agreed, *inter alia*, to pay Miller \$67,500.<sup>20</sup> In exchange, Miller agreed, *inter alia*, to settle "all benefit claims" and to "a complete closure of all other court proceedings against the State Fund, including appeal, as it pertains or relates to his October 23, 1983 injury."<sup>21</sup> Miller agreed that he entered into the settlement "of his own free will and accord without any compulsion or duress and with the counsel and advice of Amy Miller and William Galt."<sup>22</sup> The parties asked this Court to enter a judgment in accordance with their settlement agreement.<sup>23</sup>

¶ 16 Pursuant to the parties' settlement agreement, on June 14, 2001, this Court entered a Judgment and Order.<sup>24</sup> This Court ordered State Fund to pay Miller the \$67,500 and noted that, *inter alia*, Miller had agreed to dismiss a pending motion for reconsideration and to completely close all other court proceedings against State Fund, including appeal.<sup>25</sup> This Court adjudged that the parties' dispute "has been resolved by an agreement between the parties [to] fully and finally compromis[e] all benefits payable under the Workers' Compensation and/or Occupational Disease Acts, including but not limited to medical, rehabilitation, wage loss and indemnity benefits."<sup>26</sup>

¶ 17 Miller filed the case at bar on August 11, 2020.

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<sup>19</sup> *Miller v. State Comp. Ins. Fund*, WCC. No. 2000-0059, Docket Item No. 59 at 1-2 (emphasis in original) (Stipulation of Parties) (Jun. 13, 2001).

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.* For context for Miller's agreement to close "all other court proceedings," Miller had also filed a case against State Fund in the Montana Twentieth Judicial District Court, Lake County, asserting, *inter alia*, that their 1988 settlement agreement should be rescinded based on mistake of fact. On February 8, 2001, the District Court granted summary judgment for State Fund, ruling that Miller's mistake of fact claim was barred by *res judicata* because it was "identical" to the claims Miller made in his cases against State Fund in this Court and ruling against Miller on his other claims for relief. *Miller v. Mont. State Fund*, Lake Cnty. Cause No. DV00-110 (Findings of Undisputed Fact, Conclusions of Law, and Order on Defendant State Fund's Motion for Summary Judgment) (Feb. 8, 2001).

<sup>22</sup> *Miller v. State Comp. Ins. Fund*, WCC. No. 2000-0059, Docket Item No. 59 at 2 (Stipulation of Parties) (Jun. 13, 2001).

<sup>23</sup> *Id.*

<sup>24</sup> *Miller v. State Comp. Ins. Fund*, WCC. No. 2000-0059, Docket Item No. 60 (Judgment and Order) (Jun. 14, 2001).

<sup>25</sup> *Id.* at 1.

<sup>26</sup> *Id.* (emphasis in original).

## LAW AND ANALYSIS

### Miller's motion for relief from this Court's June 14, 2001, Judgment and Order under Rule 60(b)(1), (2), and (3)

¶ 18 In *State Compensation Ins. Fund v. Chapman*, the Montana Supreme Court held that M.R.Civ.P. 60 controls in cases in which a party seeks relief from a judgment of this Court.<sup>27</sup>

¶ 19 The version of Rule 60(b) in effect when this Court entered its Judgment and Order in 2001, states, in relevant part, as follows:

**Rule 60(b). Mistakes -- inadvertence -- excusable neglect -- newly discovered evidence -- fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or a party's 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 Rule 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) when a defendant has been personally served, whether in lieu of publication or not, not more than 60 days after the judgment, order or proceeding was entered or taken***, or, in a case where notice of entry of judgment is required by Rule 77(d), not more than 60 days after service of notice of entry of judgment. . . . This rule 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 may be required by law, or to set aside a judgment for fraud upon the court.<sup>28</sup>

¶ 20 When Miller's pleadings and other filings are broadly construed, he makes three arguments in support of his request for relief from this Court's June 14, 2001, judgment

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<sup>27</sup> 267 Mont. at 490, 885 P.2d at 411. See also *Heath v. Mont. State Fund*, 2019 MTWCC 4 (ruling that when parties settle and ask this Court to enter judgment in accordance with their agreement, a party seeking to rescind the settlement agreement and reopen the workers' compensation claim must seek relief from this Court's judgment under M.R.Civ.P. 60).

<sup>28</sup> Emphasis added.

under Rule 60(b). *First*, Miller asserts that he is entitled to relief under Rule 60(b)(1) because State Fund made mistakes when evaluating his claim for settlement in 1988 and in 2001. Miller makes the identical claims he made in his second case against State Fund; he asserts that when evaluating his claim for settlement in 1988, State Fund made mistakes of law by: (1) not considering COLAs, (2) considering the social security offset, (3) using the cost to purchase an annuity that would pay his future benefits as an indication of settlement value, and (4) by reducing his settlement to present value. Miller argues that if State Fund would have lawfully evaluated his case in 1988, it would have paid him the \$200,000 he had demanded. He maintains that it was not a coincidence that State Fund agreed to pay him \$67,500 in 2001; he asserts that it did so because it knew it should have paid him approximately \$67,500 more than it paid him to settle in 1988. Miller also argues that if State Fund had fairly evaluated his claim for settlement in 2001 by considering the full value of his claim, and included COLAs, it would have paid him at least \$181,374. Miller asks this Court to set aside its 2001 judgment and allow him to recover the full value of his claim, the interest on the \$67,500 that he claims State Fund should have paid him in 1988 but did not pay until 2001, and the interest he would have earned if State Fund had paid him the full value of his claim in 2001.

¶ 21 *Second*, Miller asserts that he is entitled to relief from the judgment under Rule 60(b)(2) based on newly discovered evidence. Miller requested a copy of his file from State Fund in 2020 and alleges that he discovered the report of Anne Arrington, MS, CRC, CCM, dated March 2, 2001, and the report of William Stratford, MD, dated May 3, 2001. Miller argues that these reports are additional proof that the value of his claim in 2001 was greater than \$67,500.

¶ 22 *Third*, Miller asserts that he is entitled to relief from the judgment under Rule 60(b)(3) based on State Fund's fraud, misrepresentations, and misconduct. As set forth above, Miller alleges that State Fund unlawfully evaluated the value of his claim and alleges that State Fund has continuously lied to him about the value of his claim since they first started settlement negotiations in the 1980s. He asserts that he relied on State Fund's misrepresentations because he thought State Fund was in a position of trust. He also complains that neither he nor his wife were allowed into the room with State Fund's representatives at the 2001 settlement conference to hear how they evaluated the value of his claim, to present his argument that State Fund owed him interest on the additional \$67,500 it should have paid him in 1988, nor "to be involved in the discussions of the settlement."

¶ 23 State Fund argues that Miller's request for relief from this Court's June 14, 2001, judgment under Rule 60(b) is time-barred, pointing out that Miller brought this case 19 years after this Court entered its judgment.

¶ 24 Here, Miller's request for relief from this Court's June 14, 2001, judgment is time-barred. As set forth above, the version of Rule 60(b) in effect in 2001 provides that when a motion for relief from a judgment is based upon mistake under Rule 60(b)(1), newly

discovered evidence under Rule 60(b)(2), or fraud, misrepresentations, or misconduct of the adverse party under Rule 60(b)(3), the motion had to be brought “within a reasonable time, and . . . not more than **60 days** after the judgment, order or proceeding was entered . . . .”<sup>29</sup> The Montana Supreme Court recently stated, “The deadlines for seeking Rule 59-60 relief are mandatory and subject to strict enforcement.”<sup>30</sup> This Court entered its judgment on June 14, 2001. However, Miller did not move for relief within a reasonable time nor within the time limit in Rule 60; he did not file this case until August 11, 2020, approximately **19 years** after the 60-day deadline passed. Because Miller’s motion is time-barred, it is unnecessary for this Court to reach the merits of Miller’s motion.

Miller’s independent claim to set aside this Court’s June 14, 2001,  
Judgment and Order

¶ 25 Miller also contends that this Court should set aside its judgment because of fraud upon this Court. Repeating his arguments that State Fund did not lawfully evaluate the value of his claim in 1988 and 2001, he argues that the amounts he received in 1988 and 2001 were inadequate. He contends that the manner in which State Fund evaluated the value of his claim constitutes fraud upon this Court. Citing *United States v. Beggerly*,<sup>31</sup> Miller asks this Court to set aside its 2001 judgment and award him the full value of his claim per his evaluation to correct a “grave miscarriage of justice.”

¶ 26 The Montana Supreme Court has explained:

Fraud upon the court embraces only that species of fraud which subverts or attempts to subvert the integrity of the court itself, or fraud perpetrated by officers of the court so that the judicial machinery cannot perform in an impartial manner. Fraud upon the court includes only the most egregious conduct, such as bribery of a judge or member of the jury; the fabrication of evidence in which an attorney has been implicated; or the employment of counsel to influence the court.<sup>32</sup>

¶ 27 State Fund is correct that it is entitled to summary judgment on Miller’s independent claim because Miller has not set forth any evidence of fraud upon this Court.<sup>33</sup> This Court has reviewed Miller’s prior cases against State Fund and it is evident

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<sup>29</sup> Emphasis added.

<sup>30</sup> *Meine v. Hren Ranches, Inc.*, 2020 MT 284, ¶ 16, 402 Mont. 92, 475 P.3d 748 (citation omitted).

<sup>31</sup> 524 U.S. 38, 47, 118 S.Ct. 1862, 1868 (1998) (holding that under Fed.R.Civ.P. 60, “an independent action should be available only to prevent a grave miscarriage of justice.”).

<sup>32</sup> *In re Marriage of Miller*, 273 Mont. 286, 292, 902 P.2d 1019, 1022 (1995) (citations omitted).

<sup>33</sup> See *Blacktail Mountain Ranch, Co. v. State, Dep’t of Nat. Res. & Conservation*, 2009 MT 345, ¶ 7, 353 Mont. 149, 220 P.3d 388 (stating, “Summary judgment is proper when a non-moving party fails to make a showing sufficient to establish the existence of an essential element of its case on which it bears the burden of proof at trial.”) (citation omitted).



that this Court fairly and impartially considered Miller's claims, evidence, and arguments. This Court has done the same in this case. While Miller asserts that State Fund defrauded him by unlawfully evaluating his claim for settlement in 1988 and 2001, this Court ruled in Miller's second case against State Fund that State Fund did not do anything improper or unlawful when it evaluated Miller's claim for settlement in 1988.<sup>34</sup> Miller did not present any evidence from which this Court could find that State Fund did anything improper or unlawful when it evaluated his claim for settlement in 2001 and, like the first settlement, the settlement they reached was not for a lump sum payment of undisputed benefits under § 39-71-741, MCA (1983); instead, it was a disputed liability settlement. And, in any event, "Fraud between the parties is not fraud upon the court."<sup>35</sup>

¶ 28 Miller has not presented any other evidence or argument from which this Court could lawfully set aside its 2001 judgment. As set forth above, Miller's claim for relief from the judgment for "fraud . . . , misrepresentation, or other misconduct of an adverse party" falls under Rule 60(b)(3), and that claim is now time-barred by the 60-day statute of limitations in the 2001 version of Rule 60(b). Moreover, Miller's claims that State Fund was operating under mistakes of law when it evaluated his claim for settlement in 1988 remain barred by *res judicata* because Miller litigated those claims in his second case against State Fund. Along these same lines, under Montana law, Miller may not use Rule 60 to relitigate his claims that State Fund was operating under mistakes of law when it evaluated his claim for settlement in 1988.<sup>36</sup> Finally, Miller's current dissatisfaction with the 2001 settlement amount, which is based entirely on his belief that State Fund should have paid him the full value of his claim per his evaluation, does not prove an injustice.

¶ 29 The Montana Supreme Court has stated, "There must be some point at which litigation ends and the respective rights between the parties are forever established."<sup>37</sup> Under established Montana law, the point when Miller's and State Fund's respective rights under his 1983 injury claim became forever established was in 2001. This Court understands that Miller remains dissatisfied with the 1988 settlement and that he is now dissatisfied with the 2001 settlement. However, he is bound by his agreements and does not have grounds to bring any more court cases against State Fund. Accordingly, this Court enters the following:

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<sup>34</sup> 2001 MTWCC 21, ¶¶ 15-29, 78.

<sup>35</sup> *Matter of Estate of Cooney*, 2019 MT 293, ¶ 20, 398 Mont. 166, 454 P.3d 1190 (citations omitted).

<sup>36</sup> See *Tucker v. Tucker*, 2014 MT 115, ¶ 18, 375 Mont. 24, 326 P.3d 413 (explaining that an independent action under Rule 60 "is a narrow avenue for relief, reserved for those unusual circumstances where a case of injustice is deemed sufficiently gross to demand disturbing a final judgment [and] . . . may not be used to obtain further review of issues already decided in the previous action.") (citations omitted).

<sup>37</sup> *In re Marriage of Hopper*, 1999 MT 310, ¶ 29, 297 Mont. 225, 991 P.2d 960 (citation omitted).

ORDER

¶ 30 Miller's Motion Requesting the Court to Alter or Amend Judgment [in] WCC No. 2000-0059 is **denied**.

¶ 31 State Fund's Motion for Summary Judgment is **granted**.

¶ 32 Because this Court has fully and conclusively determined the rights and liabilities of the parties, this Court now certifies as a final judgment its Order Granting Partial Summary Judgment to Respondent and Dismissing Petitioner's Tort Claims, Docket Item No. 20.<sup>38</sup>

¶ 33 This Court also certifies as a final judgment this Order: (1) Denying Petitioner's Motion Requesting the Court to Alter or Amend Judgment [in] WCC No. 2000-0059; (2) Granting Respondent's Motion for Summary Judgment; (3) Certifying Judgments as Final; and (4) Giving Notice of Entry of Final Judgment, Docket Item No. 39.<sup>39</sup>

¶ 34 Pursuant to ARM 24.5.348(2), for purposes of appeal, this Order shall be considered as a notice of entry of final judgment.

DATED this 24<sup>th</sup> day of February, 2021.

(SEAL)

/s/ DAVID M. SANDLER  
JUDGE

c: Michael Miller  
Mark D. Meyer

Submitted: February 16, 2021

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<sup>38</sup> *Miller*, 2020 MTWCC 21.

<sup>39</sup> *Miller*, 2021 MTWCC 3.