DA 18-0478

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 86N

IN RE THE MARRIAGE OF:

MARK DUANE SHEEHAN,

Petitioner and Appellant,

v.

SHELLI R. FRAZIER, f/k/a
SHELLI R. SHEEHAN,

Respondent and Appellee.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Sanders, Cause No. DR-16-31
Honorable James A. Manley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Howard Toole, Howard Toole Law Offices, Missoula, Montana

For Appellee:

Jane E. Cowley, Reep, Bell, Laird & Jasper, P.C., Missoula, Montana

Submitted on Briefs: February 6, 2019

Decided: April 9, 2019

Filed:

Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Mark Duane Sheehan appeals the Order of the Twentieth Judicial District Court, Sanders County, denying his M. R. Civ. P. 60(b) Motion to Set Aside his Marital Settlement Agreement. We affirm.

¶3 Shelli Frazier (formerly Sheehan) and Sheehan began cohabitating in 1999. In 2003, they had a daughter together. Frazier and Sheehan lived with their daughter in a log cabin built by Sheehan on property purchased decades earlier by Sheehan's parents, Rose and Richard Sheehan.

¶4 In 2004, Rose and Richard Sheehan executed a quitclaim deed transferring a one-half ownership interest of the family property (Property) to Frazier and to Frazier and Sheehan's minor daughter. On November 21, 2011, Frazier and Sheehan married.

¶5 In 2015, following Sheehan's incarceration, Sheehan and Frazier separated. In May 2016, Sheehan filed for dissolution of the marriage. On March 7, 2016, Sheehan executed a durable power of attorney (POA) in favor of his sister, Holly Sanders. The POA expressly granted Sanders the power to act on Sheehan's behalf to "settle any claim by compromise, arbitration or otherwise, whether relating to real property or not" and to "execute, deliver, and acknowledge any and all documents or instruments of whatever kind of character that

will accomplish or facilitate the exercise of any of the foregoing powers." In August 2016, after the District Court issued its pre-trial order in the dissolution action and set a final hearing date, Sanders filed a Notice of Appearance on behalf of Sheehan and advised the District Court that she spoke regularly with Sheehan about his dissolution action.

¶6 On October 23, 2017,[1] in the presence of the District Court, Frazier and Sanders executed the Settlement Agreement; Sheehan did not personally appear. The Settlement Agreement stated in relevant part:

> 19. [Frazier] acquired a titled interest in real property and [Sheehan] has a marital interest in [Frazier's] property. The disposition of said interests is addressed herein.
>
> 20. [T]his Marital Settlement Agreement is intended to resolve the property rights of the parties and resolve all claims by either party for the payment of maintenance.
>
> 21. [T]his Marital Settlement Agreement is voluntary and each of the parties has read and approved this Marital Settlement Agreement after fully considering all of its provisions.
>
> 22. The parties acknowledge that this Agreement was negotiated at arm's length. This arrangement for settlement is fair, not unconscionable and both parties request that the court approve this Agreement and incorporate the same, fully, into a final Order to be entered at the request of either party.
>
> 23. By agreement [Sheehan's] counsel prepared this Final Marital Settlement Agreement.
>
> . . .
>
> 25. [I]t is the intention of the parties that this Marital Settlement Agreement be determined by the [c]ourt to be fair and equitable and, it is specifically

[1] October 23, 2017, was the date set for both the non-jury trial in DV-15-74—the quiet title action between Frazier and Richard Sheehan—and DR-16-31—the dissolution proceeding and subject of this appeal. At the opening of the proceeding, the District Court consolidated the two cases.

intended by the parties hereto, that this Marital Settlement Agreement be incorporated into the decree of dissolution of marriage . . . .

. . .

Disclosures. The parties specifically state and acknowledge that pursuant to [§ 40-4-252 and § 40-4-253, MCA], each party has accurately and completely disclosed to each other's satisfaction all income, expenses, assets, and lability of which they are aware. . . .

The parties agree that the division of debt and property set forth herein is fair, equitable, not unconscionable, final and non-modifiable.

. . .

[Sheehan's] Division of Property. [Frazier and her daughter] each hold title to [an] undivided ½ interest in the marital property. [Sheehan's] marital interest in [Frazier's] undivided [½] interest will not transfer to him in accordance to the terms of this agreement. . . .

. . .

[Frazier's] Division of Property. [Frazier] shall receive the following real property:

i. [Frazier] shall retain her undivided ½ interest . . . in the property . . . .

. . .

Equitable Division. In reaching this Marital Settlement Agreement, the parties have considered the factors set forth in [§§ 40-4-201, -202, -203, MCA,] . . . . The parties specifically agree that, based upon the provisions set forth herein, the property and debt division set forth herein is fair, equitable and should be found by the district court in jurisdiction not to be unconscionable.

. . .

Maintenance. Both parties acknowledge that: (1) the distribution of marital property and liabilities is intended to be in lieu of maintenance . . . .

. . .

> **Child Support.** In lieu of child support, [Sheehan's] entire marital interest in the real property is herein transferred to [Frazier] . . . .

¶7 The District Court received testimony from Frazier. Frazier's counsel also clarified on the record that some of the Settlement terms were "in satisfaction of any claims [] Frazier had against [] Sheehan for child support . . . Sheehan [is] to be relieved of claims for child support and any other debts and obligations out of the marital situation today in exchange for his interest [in the Property] . . . ." At the close of the proceeding, the District Court concluded that the "Property Settlement Agreement is fair and equitable and stipulated by the parties. . . . [A]ll of that is fair and not unconscionable." The Marital Settlement Agreement was signed by Frazier, Sanders, and counsel for both parties. On October 27, 2017, the District Court entered its Findings of Fact, Conclusions of Law, and Entry of Final Decree with Final Parenting Plan, incorporating the Marital Settlement Agreement into the Decree.

¶8 After the Marital Settlement Agreement was executed and approved by the District Court, and then incorporated into the District Court's final decree, Sheehan submitted an affidavit stating he directed Sanders not to agree to or sign any settlement agreement on his behalf. On May 10, 2018, Sanders submitted a signed affidavit stating that, ten days prior to the signing of the Settlement Agreement, Sheehan instructed her not to agree to any settlement.

¶9 On May 17, 2018, Sheehan, with new counsel, moved to set aside the Marital Settlement Agreement and Final Judgment under M. R. Civ. P. 60(b)(1) and (6). On

July 13, 2018, the District Court denied Sheehan's Motion for Relief from Settlement and Judgment.

¶10 This Court's review of a decision to grant or deny a M. R. Civ. P. 60(b) motion depends on the basis of the motion and the relief sought. *In re Marriage of Wagenman*, 2016 MT 176, ¶ 8, 384 Mont. 149, 376 P.3d 121 (citing *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451). In cases not involving a default judgment, we review a district court's denial of a M. R. Civ. P. 60(b) motion for an abuse of discretion. *In re Marriage of Wagenman*, ¶ 8; *In re Marriage of Tanascu*, 2014 MT 293, ¶ 9, 377 Mont. 1, 338 P.3d 47. We presume a district court's determination of whether a property settlement agreement is unconscionable or not is correct, and we will not overturn the determination absent an abuse of discretion. *In re Marriage of Tanascu*, ¶ 9.

¶11 Upon motion under M. R. Civ. P. 60(b), a district court may relieve a party from a final judgment under certain circumstances. M. R. Civ. P. 60 provides:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect; [or]
>
> . . .
>
> (6) any other reason that justifies relief.

¶12 Relief under M. R. Civ. P. 60(b)(1) is appropriate where the moving party has been wronged through no fault of his own. *In re Marriage of Hopper*, 1999 MT 310, ¶ 29, 297 Mont. 225, 991 P.2d 960. For example, this Court determined it was proper to set

aside a judgment due to "surprise" where a district court indicated the judgment entered would be for the relief requested in the divorce petition; instead, the district court awarded substantially more to one party without providing the opposing party a chance to contest the distribution of assets. *In re Marriage of Steyh*, 2013 MT 175, ¶¶ 11-13, 370 Mont. 494, 305 P.3d 50 (citing M. R. Civ. P. 60(b)(1)).

¶13 Generally, relief under M. R. Civ. P. 60(b)(6) is afforded only in extraordinary situations when circumstances go beyond those covered in M. R. Civ. P. 60(b)(1)–(5). *Wittich Law Firm, P.C. v. O'Connell*, 2013 MT 122, ¶ 20, 370 Mont. 103, 304 P.3d 375; *Essex Ins. Co.*, ¶¶ 21, 23 (reversing a district court's grant of a M. R. Civ. P. 60(b)(6) motion where the movant failed to show that "none of the other five reasons in [M. R. Civ. P.] 60(b) apply . . . ."). A M. R. Civ. P. 60(b)(6) motion "must be more than a request for rehearing, or a request for the district court to change its mind; it must be shown that something prevented a full presentation of the cause or an accurate determination of the merits that for reasons of fairness and equity redress is justified." *In re Marriage of Orcutt*, 2011 MT 107, ¶ 11, 360 Mont. 353, 253 P.3d 884; *In re Marriage of Wagenman*, ¶ 11.

¶14 Any proposed modification of a property settlement agreement previously incorporated into a decree of dissolution "necessarily requires application of the relevant statutes on marriage dissolution and property division." *In re Marriage of Tanascu*, ¶ 12 (citing § 40-4-201, MCA). M. R. Civ. P. 60(b) provides "no alternate or independent ground for a court to consider a request to modify a prior property settlement." *In re Marriage of Tanascu*, ¶ 12.

¶15 Montana public policy promotes the amicable settlement of disputes between parties to a marriage. *In re Marriage of Wagenman*, ¶ 14 (citing § 40-4-201(1), MCA). Parties to a marriage dissolution may enter into a written settlement agreement (referred to in the statute as a "separation agreement") containing provisions for disposition of any property owned by either spouse. Section 40-4-201(1), MCA; *In re Marriage of Wagenman*, ¶ 14; *In re Marriage of Simms*, 264 Mont. 317, 321, 871 P.2d 899, 900 (1994). Parties to a settlement agreement are bound by the terms of that agreement unless the district court *sua sponte*, or upon the motion of either party, finds the settlement agreement to be unconscionable. Section 40-4-201(2), MCA. Similarly, a district court may not modify the terms of a settlement agreement absent a finding of unconscionability. *In re Marriage of Wagenman*, ¶¶ 14, 17-18; *In re Marriage of Tanascu*, ¶ 14; *Hadford v. Hadford*, 194 Mont. 518, 523, 633 P.2d 1181, 1184 (1981) (the conscionability versus unconscionability of a settlement agreement is decided by operation of law when the settlement is approved and merged with the divorce decree). "Unconscionability . . . is discussed in the Code Commissioner's comments," *In re Marriage of Lawrence*, 197 Mont. 262, 271, 642 P.2d 1043, 1048 (1982), where it is defined as including "protection against one-sidedness, oppression, or unfair surprise," § 40-4-201, MCA, *Annotations*, Comm'rs Note (2013).

¶16 When parties "have signed and executed a property settlement agreement and conscionability is not raised as an issue, the [district] court need not determine the net worth and 'must conclude' that the parties have determined the value of their assets." *In re Marriage of Tanascu*, ¶ 15 (citations omitted); *see also In re Marriage of Lawrence*,

197 Mont. at 271, 642 P.2d at 1047-48 (finding a disproportionate distribution of assets does not amount to unconscionability).

¶17 The District Court concluded Sheehan's allegations did not support setting aside the Marital Settlement Agreement on the grounds of "surprise" under M. R. Civ. P. 60(b)(1). The District Court determined that despite Sheehan's allegations of professional misconduct, Sheehan's prior counsel *had* gathered and submitted evidence and prepared for trial. Additionally, Sheehan nominated an agent and vested her with the authority to act on his behalf, and his agent and counsel were given an opportunity to consent or object to the terms of the Marital Settlement Agreement. Further, because Sheehan alleged the Settlement Agreement should be set aside under M. R. Civ. P. 60(b)(1) due to surprise, the District Court declared that he should not now seek relief under the mutually exclusive M. R. Civ. P. 60(b)(6). However, even after analyzing his alleged grounds for relief under M. R. Civ. P. 60(b)(6)—namely misconduct by his then-counsel—the District Court concluded the record did not support Sheehan's allegations.

¶18 Sheehan argues the District Court erred (1) when it accepted the Marital Settlement Agreement, and (2) when it refused to set aside the Marital Settlement Agreement pursuant to his M. R. Civ. P. 60(b) Motion. Sheehan further argues that the Marital Settlement Agreement was unconscionable because it provided him no share, either by way of a division of land or a buyout, of the only marital asset of substantial value: the Property.[2]

[2] Sheehan additionally inserts irrelevant allegations regarding the suit between Frazier and Sheehan's father as evidence of unconscionability. He also alleges his prior counsel violated various Montana Rules of Professional Conduct. Allegations of professional misconduct should

He also argues that the District Court should not have relied upon Frazier's valuation of the Property. We disagree.

¶19 Sheehan vested Sanders, as his POA, with the authority to settle any claims by "compromise, arbitration or otherwise" on his behalf. Frazier appeared with counsel, Sanders appeared with Sheehan's counsel, and the parties presented a signed Marital Settlement Agreement to the District Court. Frazier testified the terms of the Agreement were fair, equitable, and that both parties had fully disclosed their assets, liability, incomes and expenses. *See In re Marriage of Tanascu*, ¶ 16. Sheehan's POA and counsel did not object but instead endorsed the Marital Settlement Agreement, specifically agreeing that it was "fair, equitable and should be found by the [D]istrict [C]ourt . . . not to be unconscionable." After neither party raised any other issues of unconscionability, the District Court determined that the Settlement was "fair, equitable, and not unconscionable." *See* § 40-4-201(2), MCA. Absent a finding of unconscionability, the District Court was not authorized to modify the terms of the Marital Settlement Agreement. *See In re Marriage of Wagenman*, ¶¶ 14, 17-18. It was only after Sheehan sought relief from the Marital Settlement Agreement in his M. R. Civ. P. 60(b) Motion that he made the conclusory statement: "The settlement was unconscionable." We will not hold a district court in error when a party did not lodge an objection or raise unconscionability at the time

---

be reported to the Office of Disciplinary Counsel. We decline to entertain these arguments, and we limit our review of Sheehan's appeal of the District Court's Order on his M. R. Civ. P. 60(b) Motion to the issues presented and determined in that Order. *See Flesch v. McDonald's Rest.*, 2005 MT 235, ¶ 19, 328 Mont. 407, 121 P.3d 527; *see also Hansen Trust v. Ward*, 2015 MT 131, ¶ 19, 379 Mont. 161, 349 P.3d 500 (absent allegations that an alleged error affects a litigant's substantial rights, this Court will not consider issues raised for the first time on appeal).

of the settlement agreement, especially after subsequent examination by the district court revealed no unconscionability. *See In re Marriage of Tanascu*, ¶ 16.

¶20 The District Court was not required to ascertain the value of any marital assets. *See In re Marriage of Tanascu*, ¶ 15. Therefore, Sheehan's contentions that the Property was not properly valued and that he is entitled to a greater share are similarly unavailing. Sheehan also seemingly forgets terms of the Marital Settlement Agreement, and testimony at the proceeding, that stated the properly division was in satisfaction and recognition for maintenance and child support obligations Sheehan otherwise might have had.

¶21 Sheehan alleged numerous Rules of Professional Conduct violations by Sheehan's then-counsel and a lack of power by his POA to enter a settlement as evidence of his "surprise" necessitating relief under M. R. Civ. P. 60(b)(1). However, after investigating Sheehan's assertions, the District Court concluded that any assertions Sheehan's then-counsel failed to adequately prepare and represent Sheehan and that Sheehan was "surprised" by the Settlement Agreement were meritless. Further, Sheehan's POA was granted authority to act on his behalf to consent or object to the terms of the Marital Settlement Agreement. Thus, the District Court properly concluded Sheehan failed to demonstrate he had been wronged. *See In re Marriage of Hopper*, ¶ 29. The District Court did not abuse its discretion when it determined Sheehan failed to demonstrate "surprise" necessitating relief under M. R. Civ. P. 60(b)(1).

¶22 Finally, when seeking relief under M. R. Civ. P. 60(b)(6), Sheehan did not argue the grounds for relief provided by M. R. Civ. P. 60(b)(1)–(5) were inapplicable. Sheehan failed to make the required demonstration necessary to seek relief under the stringent

requirements of M. R. Civ. P. 60(b)(6). *See O'Connell*, ¶ 20. The District Court did not abuse its discretion in denying the requested relief under M. R. Civ. P. 60(b)(6). *See In re Marriage of Wagenman*, ¶ 8; *Essex Ins. Co.*, ¶ 16.

¶23 Sheehan has not presented any substantial reason why the Marital Settlement Agreement should be set aside or the dissolution decree should be modified. *See In re Marriage of Tanascu*, ¶¶ 16-17. After reviewing the record, we conclude Sheehan failed to establish any reason that would justify relief under M. R. Civ. P. 60(b)(1) or (6). Accordingly, the District Court did not abuse its discretion when it determined the Marital Settlement Agreement was conscionable, declined to value the Property, and refused to grant Sheehan's M. R. Civ. P. 60(b) Motion to Set Aside the Marital Settlement Agreement. *See In re Marriage of Tanascu*, ¶¶ 9, 15-16.

¶24 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court's interpretation and application of the law were correct, its findings of fact are not clearly erroneous, and its ruling was not an abuse of discretion. We affirm.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ DIRK M. SANDEFUR
/S/ JIM RICE
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON