

DA 18-0581

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 144N

IN RE THE MARRIAGE OF:

TIMOTHY D. SCRANTOM,

Petitioner and Appellant,

and

LILA S. MASTERS,

Respondent and Appellee.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DR-09-318A
Honorable Holly Brown, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Timothy D. Scrantom, Self-Represented, Charleston, South Carolina

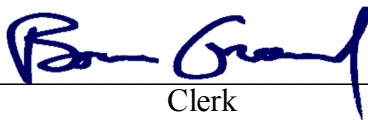
For Appellee:

James K. Lubing, Lubing Law Group, LLC, Jackson, Wyoming

Submitted on Briefs: April 24, 2019

Decided: June 25, 2019

Filed:


Clerk

Chief Justice Mike McGrath 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 Timothy Scrantom appeals from an order of the Eighteenth Judicial District Court, Gallatin County, denying his motion for indemnification from Lila Masters. We affirm.

¶3 The marriage between Timothy and Lila was dissolved in April 2012. The parties entered into a Property Settlement Agreement (Agreement) which was incorporated by reference into the dissolution decree. The Agreement provides:

Lila shall indemnify and hold and save Timothy and the Trusts (as defined in Section 8 hereof) harmless from and against any and all debts, liabilities and expenses, including reasonable attorney's fees, costs, and interest, relating to the assets allocated to her and, all debts incurred by Lila and any and all liabilities in her name incurred on or after October 1, 2008, except as provided herein.

¶4 To fund her costs associated with the dissolution, Lila contracted with Balance Point Divorce Funding, LLC (Balance Point). Following entry of the dissolution decree, Balance Point sued Lila in a separate case alleging, in part, breach of her obligation to pay Balance Point pursuant to the terms of their funding agreement. The case eventually settled. In February 2013, Balance Point sued Timothy individually in New York Federal District Court, alleging tortious interference with contract, tortious interference with

business relations, and misappropriation of trade secrets—Balance Point later voluntarily dismissed the lawsuit.

¶5 On January 16, 2015, Timothy filed a motion to enforce the dissolution decree, seeking indemnification for attorney’s fees and costs he incurred in defending the New York lawsuit. The District Court denied the motion and Timothy now appeals.

¶6 Two standards of review are relevant in a case involving both a standing master and the district court: the standard the district court applies to the master’s report and the standard we apply to the district court’s decision. *In re Marriage of Kostelnik*, 2015 MT 283, ¶ 15, 381 Mont. 182, 357 P.3d 912. This Court reviews a district court’s decision de novo to determine whether it applied the correct standard of review to a standing master’s findings of fact and conclusions of law. *Kostelnik*, ¶ 15. A district court reviews a standing master’s findings of fact for clear error, and its conclusions of law to determine if they are correct. *Kostelnik*, ¶ 15. Our standard of review in equity cases is set forth in § 3-2-204(5), MCA. Under that provision, we have a “duty to determine all of the issues of [the] case and to do complete justice.” *Glacier Park Co. v. Mountain, Inc.*, 285 Mont. 420, 427, 949 P.2d 229, 233 (1997) (citation omitted). In reviewing a district court’s exercise of its equitable powers, this Court is required to review “all questions of fact arising upon evidence presented in the record” to determine if the court’s findings are clearly erroneous. *Kauffman-Harmon v. Kauffman*, 2001 MT 238, ¶ 11, 307 Mont. 45, 36 P.3d 408 (citation omitted). We determine if the court’s interpretation of the law is correct. *Kauffman*, ¶ 11.

¶7 Timothy first alleges that Lila fraudulently failed to disclose her financial obligations with Balance Point during the divorce proceedings. Timothy initially presented this argument in a motion for sanctions, penalties, and injunctions in April 2013. The District Court denied the motion on July 11, 2017, finding the claim flawed for failure to first file a timely M. R. Civ. P. 60 motion to set aside the final decree of dissolution. The final decree of dissolution was entered on April 19, 2012. Timothy did not object to the final decree, as approved by the standing master, nor did he file an appeal. While M. R. Civ. P. 60 allows for relief from a final judgment or order, it does so only if the motion is made within a reasonable time or no more than one year after the entry of judgment. M. R. Civ. P. 60(c)(1). Timothy did not file a timely Rule 60 motion to set aside the final decree of dissolution.¹ Timothy also requests relief pursuant to § 40-4-253(5), MCA, which provides: “the court may set aside the judgment, or part of the judgment, if the court discovers, within 5 years from the date of entry of judgment, that a party has committed perjury in the final declaration of disclosure.” Timothy did not present this argument in the April 2013 motion for sanctions, nor did he specifically request relief pursuant to § 40-4-253(5), MCA, before the expiration of the five-year deadline enunciated in the statute. For these reasons, Timothy is not entitled to the relief he requests under § 40-4-253(5), MCA, or M. R. Civ. P 60.

¶8 Timothy reasserts that pursuant to the Agreement’s indemnification clause, Lila is responsible for the \$467, 208.71 he incurred in defending the New York lawsuit because,

¹ Timothy only filed a Rule 60 motion on January 30, 2018, to set aside the court’s July 11, 2017 denial of his motion for sanctions.

as he characterizes it, the litigation was a collection action for Lila's debt to Balance Point. The Agreement is a contract between Timothy and Lila. Section 40-4-201(5), MCA. The interpretation and construction of a contract is a question of law. *Krajacich v. Great Falls Clinic, LLP*, 2012 MT 82, ¶ 13, 364 Mont. 455, 276 P.3d 922. Whether an ambiguity exists is also a question of law for the court to decide. *Doble v. Bernhard*, 1998 MT 124, ¶ 19, 959 P.2d 488, 289 Mont. 80. Where the language of an agreement is clear and unambiguous, the duty of the court is to apply the language as written. *Doble*, ¶ 19. Contract provisions of indemnity are valid under Montana law. *Sweet v. Colborn School Supply*, 196 Mont. 367, 369, 639 P.2d 521, 523 (1982). However, "a party cannot be indemnified against its own negligence unless the contract provisions are 'clear and unequivocal.'" *Sweet*, 196 Mont. at 369-70, 639 P.2d at 523.²

¶9 The Agreement unambiguously provides that Lila must indemnify Timothy for "any and all debts, liabilities and expenses, including reasonable attorney's fees, costs, and interest, relating to the assets allocated to her and, all debts incurred by Lila and any and all liabilities in her name" Balance Point's New York lawsuit against Timothy did not involve the debts and liabilities relating to Lila's allocated assets, but rather Timothy's own alleged tortious conduct. Specifically, Balance point accused Timothy of persuading Lila to breach her agreement with Balance Point and using confidential information from Lila to benefit his own litigation funding businesses. Timothy is not

² Further, "all contracts that have for their object, directly or indirectly, to exempt anyone from responsibility for the person's own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent, are against the policy of the law." Section 28-2-702, MCA.

entitled to indemnification because he neither paid nor was ordered to pay any debt or liability of Lila's to Balance Point. Moreover, the Agreement's indemnity provision does not meet the "clear and unequivocal" standard allowing for the indemnification of Timothy's torts. The plain language of the Agreement explicitly allows only for the indemnification of debts or liabilities stemming from Lila's *allocated property*. Lila did not agree to take on the responsibilities of Timothy's independent tortious conduct. Accordingly, the District Court correctly denied Timothy's request for indemnification.

¶10 Alternatively, Timothy asserts that it would be inequitable for Lila not to indemnify him, considering she failed to disclose her contract with Balance Point. The party requesting equitable relief must set forth facts which appeal to the conscience of a court of equity. *Glacier Park Co.*, 285 Mont. at 427, 949 P.2d at 233. The plain language of the Agreement does not support the equitable relief Timothy requests. Lila did not agree to indemnify Timothy for his individual torts and Timothy otherwise fails to demonstrate the appropriateness of equitable relief under these circumstances.

¶11 Finally, Timothy asserts that Lila breached § 5(d) of the Agreement and the District Court erred when it held otherwise. Section 5(d) of the Agreement provides: "Each of the parties agrees to cooperate with the other and to use their respective best efforts to have Lila released from all debt allocated to Timothy and Timothy *released from all debt allocated to Lila . . .*" (emphasis added). Again, the New York lawsuit did not involve debts allocated to Lila in the dissolution but only liabilities incurred through Timothy's own alleged tortious conduct. Timothy contends that Lila could have "ended the litigation against [him] at any time, but she chose to wait, increasing his costs of

defense all the while.” Other than mere conclusory allegations, Timothy provides no factual support for this assertion that Lila was responsible for, or even capable of, procuring his release from Balance Point’s tort claims.

¶12 The District Court did not err in denying Timothy’s motion for indemnification, and other related claims.

¶13 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶14 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JIM RICE

/S/ LAURIE McKINNON

/S/ BETH BAKER

/S/ DIRK M. SANDEFUR