

DA 18-0379

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 162N

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DANIEL R. ERVING and STEFANIE L. ERVING,

Plaintiffs, Appellees, and Cross-Appellants,

v.

MARY FLORENCE ERVING,

Defendant, Appellant, and Cross-Appellee.

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APPEAL FROM: District Court of the First Judicial District,  
In and For the County of Lewis and Clark, Cause No. CDV 2018-26  
Honorable Kathy Seeley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Michelle H. Vanisko, Hinshaw & Vanisko, PLLC, Helena, Montana

For Appellee:

Daniel R. Erving, Stefanie L. Erving, Self-Represented, Helena, Montana

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Submitted on Briefs: May 22, 2019

Decided: July 16, 2019

Filed:

  
Clerk

Justice Beth Baker 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 Daniel R. Erving and his wife, Stefanie L. Erving, filed suit in Lewis and Clark County Justice Court against Mary Florence Erving, alleging that she wrongfully occupied an apartment that Daniel had the right to occupy. Mary Florence appealed the Justice Court's adverse ruling to the First Judicial District Court. Mary Florence now appeals the District Court's order asserting jurisdiction over the interpretation of the Ralph A. Erving Revocable Trust and rendering a final decision after it found that the Justice Court did not have subject matter jurisdiction to hear the case. We affirm.

¶3 In 1997, Mary Florence's and Daniel's father, Ralph Erving, created a trust that provided in pertinent part, "Since I have provided for my son, Daniel R. Erving, during his lifetime I give him the sum of \$1,000.00 and also give him the right to occupy for his lifetime an apartment in either of the premises located at 311 9th Avenue or 424 N. Davis Street in Helena, Montana. Both of these properties are owned by my Trust at this time." The property on 9th Avenue has three apartments and the property on Davis Street has four apartments. The trust provided for a 30% share in the remainder of the trust to Mary Florence and 70% to Thomas Q. Erving. Mary Florence and Thomas were named

as successor trustees in the event Ralph was no longer able to act. Ralph died in 1998, and Daniel moved into one of the Davis Street apartments. The parties dispute when Daniel stopped using the apartment as his primary residence but agree that Daniel has not so used the apartment for numerous years.

¶4 In December 2016, Daniel received notice that Mary Florence was moving into the Davis Street apartment. Mary Florence claimed that she sent Daniel the notice because he had left the apartment vacant for several years and he had been renting out the apartment and keeping the rental proceeds for himself. In May 2017, Daniel filed his complaint with the Justice Court, alleging that Mary Florence wrongfully possessed the apartment and demanding return of the same, along with \$12,000 in loss of rental income and personal property. A month later, representing herself, Mary Florence filed a motion to dismiss for lack of subject matter jurisdiction. The Justice Court did not issue an order, and the case went to trial in June 2017. After the trial, the Justice Court ordered the parties to mediate. When mediation did not succeed, Mary Florence filed a document in support of renewing her motion that the Justice Court dismiss the case for lack of jurisdiction. Mary Florence also submitted an Order Dismissing Complaint and Notice of Eviction, and Vacating Trial to the Justice Court's clerks. Daniel maintains that he received a copy of the Order, but not of the document supporting the renewal motion.

¶5 Daniel responded by filing a Petition for Status, notifying the court that he had received Mary Florence's paperwork and claiming that the unsigned order was "fictitious paperwork." The Justice Court found that Mary Florence attempted to mislead

the court and the plaintiffs by submitting a “fraudulent” document that was “not prepared, signed or submitted by the [Justice] Court.” The court ordered a show cause hearing as to why Mary Florence should not be held in contempt. Mary Florence argued before the Justice Court that she had filed the order as a proposed order. The Justice Court held Mary Florence in contempt for attempting to mislead the plaintiffs and the court by filing the order without a motion for or a brief in support of its adoption. Shortly after the hearing, the Justice Court issued its order, allowing Daniel the right to choose the apartment that he would occupy.

¶6 Mary Florence appealed to the District Court. The District Court held that the Justice Court did not have subject matter jurisdiction to consider the parties’ respective rights under the terms of Ralph’s trust. The District Court considered the parties’ arguments and held that Mary Florence must vacate the Davis Street apartment. The court concluded further that Daniel is not the owner of the apartment and may not rent out the apartment, but that he is entitled to occupy the residence and one of the garages.

¶7 Mary Florence argues on appeal that because the Justice Court did not have subject matter jurisdiction, the District Court did not gain jurisdiction merely because it would have had original jurisdiction over the parties’ claims. Mary Florence maintains that the District Court should have dismissed the complaint “outright” and directed Daniel and Stefanie to file a new action in the District Court. Mary Florence claims also that her due process rights were violated when she was not given the opportunity to be heard at the show cause hearing, reasoning that the Justice Court “talked over her attempts” to explain

herself. Mary Florence argues that even if the District Court had jurisdiction, the court's finding that Daniel had the right to choose which apartment he lived in was clearly erroneous.

¶8 Section 72-38-201(1), MCA, provides exclusive subject matter jurisdiction to the district courts over proceedings concerning the internal affairs of trusts. When a judgment from a justice court is reversed on a question of law, the district court must either try the case anew or render a final judgment. Section 25-33-302, MCA. In concluding that the Justice Court did not have jurisdiction, the District Court correctly held that it has "exclusive" subject matter jurisdiction over the proceedings concerning interpretation of the trust. Section 72-38-201, MCA. The District Court did not have to try the case anew, as it had the option to render a final judgment from the record. Section 25-33-302, MCA. In proceeding to consider the case on its merits, the court reasoned that "Mary Florence ask[ed] [the District Court] to render a final judgment. She asserts that a final judgment will provide greater judicial economy and there are no new or other material facts to support Daniel's claims."

¶9 Mary Florence argues that she requested the District Court to render a decision without a new trial only on issues that did not involve trust interpretation: (1) Daniel's claim of personal property loss; (2) the award of costs or expenses; (3) whether Daniel owns the apartment; and (4) whether Daniel is named a trustee of the trust. Neither party objected to the District Court rendering a final decision on the interpretation of the trust and Daniel's right to occupy the Davis Street apartment. Mary Florence argued to the

District Court that the trustees had the right to choose which apartment Daniel could occupy and that Daniel did not have the right to occupy an apartment of his choice. Mary Florence maintained that “[c]learly, this is an issue regarding legal rights as they relate to a trust. Trust[] . . . matters must be held in a district court.” Mary Florence argued further in her District Court reply brief that “[t]his case is essentially about interpreting the terms of a trust and determining the rights of the trust[']s beneficiaries.” To render a decision on who has the right to choose the apartment Daniel occupies, the District Court had to interpret the trust. Mary Florence’s request on appeal to the District Court therefore was that the court render a final decision on the issue raised. Because neither party objected and both substantively consented to the District Court’s rendering a final decision, the District Court did not err in deciding the case.

¶10 Mary Florence argues further that the Justice Court denied her procedural due process because, although she may have been provided adequate notice of the show cause hearing, the court did not provide her a reasonable opportunity to be heard when it “continually talked over her and would not allow her to speak.” Mary Florence maintains that after it refused to let her speak, the Justice Court ruled in Daniel’s favor in what appears to be a sanction for her improper behavior.

¶11 Due process expresses the requirements of fundamental fairness. *City of Missoula v. Mountain Water Co.*, 2016 MT 183, ¶ 25, 384 Mont. 193, 378 P.3d 1113. The requirements for procedural due process are notice and an opportunity to be heard. *Mountain Water Co.*, ¶ 25. On appeal from Justice Court, the District Court provided

Mary Florence a full and fair opportunity to be heard on the case. The District Court did not rely solely on the show cause hearing, but reviewed the Justice Court record in its entirety, along with the parties' briefing, before rendering its decision. The District Court held that the plain language of the trust governed its interpretation and made its ruling on that basis. Mary Florence was not denied due process when the District Court looked to the entire record in rendering its decision and not just to the show cause hearing in which Mary Florence alleges she was not given the opportunity to be heard.

¶12 Finally, Mary Florence argues that the District Court clearly erred in finding that Daniel had the right to choose which apartment to live in because nothing in the record suggests he had the choice. The interpretation of a trust agreement is a question of law that this Court reviews for correctness. *In re Cecelia Kincaid Gift Trust*, 2012 MT 119, ¶ 7, 365 Mont. 179, 278 P.3d 1026. The District Court's conclusion that Daniel had the right to choose the apartment is not a finding of fact. The threshold inquiry in any trust case is to examine the language of the trust document. *Collins v. Norwest Inv. Mgt. & Trust*, 2002 MT 277, ¶ 35, 312 Mont. 366, 59 P.3d 1080. "The trustor's intent controls our interpretation of a trust agreement, and we attempt to discern the trustor's intent from the language of the entire trust agreement, rather than from a particular word or phrase." *In re Charles M. Bair Family Trust*, 2008 MT 144, ¶ 32, 343 Mont. 138, 183 P.3d 61. Section 1-4-101, MCA, provides that the role of the court is to ascertain what is in the terms of a written instrument, and the construction of the instrument is "to be adopted as will give effect to all."

¶13 The trust instrument clearly provides that Daniel has the right to occupy any apartment in one of the two buildings owned by the trust. The trust does not provide that it is the duty of the trustees to choose which apartment Daniel has the right to occupy for his lifetime. Though it likewise does not provide specifically that Daniel has the right to choose, Ralph named Daniel in the trust and gave him the right to occupy an apartment in “either” building. To give effect to the trustor’s intent, the trust must be read as a whole. The District Court did not err in determining that Daniel has the right to choose which apartment he has the right to occupy for his lifetime.

¶14 Daniel raises a number of issues on cross-appeal: (1) Mary Florence caused Daniel to lose \$47,760 in rental income from a four-year rental agreement; (2) the District Court erred in failing to award Daniel treble compensatory damages; (3) the District Court erred when it held that Daniel could not rent out the apartment because he did not own it; (4) the District Court erred in directing that Daniel be responsible for the grounds upkeep of the apartment and the utilities for all apartments; and (5) the District Court erred in its decision to deny his motion for removal of Mary Florence’s counsel due to a conflict of interest.

¶15 This Court will not hold a district court in error for failing to address an issue or an argument that was not made before it. *State v. Payne*, 2011 MT 35, ¶ 39, 359 Mont. 270, 248 P.3d 842. Whether Mary Florence caused Daniel to lose \$47,760 in rental income from a four-year rental agreement was not argued before or addressed by the District Court; we therefore decline to consider it.



¶16 The District Court concluded that Daniel is not the owner of the Davis Street apartment and that the trust agreement does not authorize him to rent the apartment out as an owner. As such, Daniel is not entitled to compensatory damages for lost rental income for an apartment he was not authorized to rent. The court determined that taxes, maintenance, and repair for the building remain the obligation of the trust and, as long as Daniel resides in the apartment, he is “responsible for the costs associated with his occupation of the apartment.” The District Court found that Daniel provided no evidence of alleged significantly harmful information he disclosed to the law firm representing Mary Florence that would warrant removal of counsel. Having reviewed the evidence, the arguments of the parties, and the District Court’s findings and conclusions, we conclude that Daniel has shown no legal error or abuse of discretion regarding his cross-appeal issues.

¶17 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. We affirm.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH  
/S/ INGRID GUSTAFSON  
/S/ JAMES JEREMIAH SHEA  
/S/ LAURIE McKINNON