

DA 19-0191

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 302N

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ERVIN SHARBONO and HANNELORE SHARBONO,

Plaintiffs and Appellants,

v.

STEVEN L. COLE and PAT L. COLE,

Defendants and Appellees.

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APPEAL FROM: District Court of the Twenty-Second Judicial District,  
In and For the County of Carbon, Cause No. DV 08-48  
Honorable Rod Souza, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Jason M. Collins, Lee Michael Wilson, Nicholas J. Lofing, Garlington,  
Lohn & Robinson, PLLP, Missoula, Montana

For Appellees:


Geoffrey R. Keller, Matovich, Keller & Murphy, P.C., Billings, Montana

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Submitted on Briefs: December 11, 2019

Decided: December 31, 2019

Filed:

  
Clerk

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Justice Ingrid Gustafson 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 Ervin Sharbono<sup>1</sup> and Hannelore Sharbono (Sharbonos) appeal from the Findings of Fact, Conclusions of Law, and Order Granting Defendants' Motion to Enforce Written Settlement Agreement issued by the Twenty-Second Judicial District Court, Carbon County, on February 25, 2019, and the Judgment entered thereafter on February 27, 2019. We affirm.

¶3 In 2008, the Sharbonos sued Appellees Steven Cole and Pat Cole (Coles) alleging the Coles violated the Sharbonos' water rights by stopping the flow of undeveloped streams on their property. In 2012, the parties mediated but did not resolve the dispute. Following a bench trial in 2014, District Court Judge Gregory Todd granted judgment as a matter of law to the Coles. Sharbonos appealed and the parties again engaged in an unsuccessful mediation of the dispute. This Court then reversed the District Court's decision and remanded for a new trial in 2015. *See Sharbono v. Cole*, 2015 MT 257, 381 Mont. 13, 355 P.3d 782.

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<sup>1</sup> Unfortunately, Ervin passed away during the pendency of this appeal.

¶4 On remand, the parties were again required to mediate. The mediation occurred January 30, 2018, and lasted from 9:00 a.m. to 7:30 p.m. At the time of the mediation, Ervin was 82 years old and Hannelore was 77 years old. They were represented at the mediation by their long-term legal counsel, Renee Coppock and Eli Patten, who had represented the couple over the prior ten years. Mr. and Mrs. Mitchell, Ervin's brother-in-law and his sister, also attended the mediation with them. Ultimately, that day the parties settled, Sharbonos' attorneys drafted a General Mutual Settlement Agreement, and the parties signed the agreement.

¶5 The next morning following the mediation, Sharbonos contacted their attorneys to express their dissatisfaction with the settlement and their desire to rescind it. Coles filed their Motion to Enforce Written Settlement Agreement and the District Court held a hearing on the motion on August 20, 2018. At the hearing, Sharbonos argued for equitable rescission of the settlement agreement. In support of their position, they asserted they were both elderly and the long day of mediation left them weary and drained; they were upset that their fatigue and the pressure of their attorneys had compelled them to sign a settlement agreement contrary to their long-held litigation goals and interests; Hannelore had gone along with the agreement because Ervin had and she had not read the agreement before she signed it; although no doctor had declared Ervin incompetent, he had a history of a three-day hospitalization due to mental health problems which reportedly made him unaware of what he says and prone to making a great deal of mistakes; they took immediate and unequivocal actions to rescind the agreement; and Coles did not rely on the agreement to their detriment. Following hearing, the District Court issued its Findings of Fact,

Conclusions of Law, and Order Granting Defendants’ Motion to Enforce Written Settlement Agreement. In sum, the District Court found that although the Sharbonos were elderly and had some health problems, they had not ever been declared incompetent by a physician. The court found the long-standing nature of the attorney-client relationship Sharbonos had belied their claim of coercion or undue pressure by their counsel and the active participation of Mr. Mitchell in the settlement and the ability of Sharbonos to consult with their water expert, Lee Yellin, during the mediation further discounted their assertion they were coerced into signing the settlement agreement. Sharbonos’ familiarity with mediation and the fact that they had twice before concluded mediations without reaching settlement indicated they knew they did not have to settle if they did not want to. The District Court found the Settlement Agreement to be a valid contract and granted Coles’ motion to enforce it.

¶6 This Court reviews factual findings to determine whether they are clearly erroneous—not supported by substantial evidence, the court has misapprehended the effect of the evidence, or if this Court is left with the definite and firm conviction that a mistake has been made. *Jarussi v. Sandra L. Farber Trust*, 2019 MT 181, ¶ 13, 396 Mont. 488, 445 P.3d 1226. In making this determination, we review the evidence in the light most favorable to the prevailing party. *Jarussi*, ¶ 13. We review conclusions of law for correctness. *Jarussi*, ¶ 13.

¶7 Determination of whether Sharbonos established equitable rescission is highly fact dependent. Sharbonos do not really disagree with the facts or law found by the District Court, but rather disagree with the court’s interpretation of those facts. Sharbonos urge us

to substitute their interpretation of the facts to find the District Court abused its discretion. We decline to do so.

¶8 At hearing, the District Court heard testimony regarding all of the matters raised by Sharbonos—their ages, health statuses, and fatigue; coercion and undue pressure/influence; their actions regarding rescission and the timing thereof; and Coles’ reliance—and having issued a thorough, extensive, and detailed Findings of Fact, Conclusions of Law and Order Granting Defendants’ Motion to Enforce Written Settlement Agreement, the District Court well-understood the matters Sharbonos raised. The District Court heard the Sharbonos’ testimony and had opportunity to observe them and examine their demeanors within the context of all the evidence presented. The District Court was faced with contradictory evidence and was in the best position to sort it out. We have noted on numerous occasions that it is not our role to reweigh conflicting evidence or substitute our evaluation of the evidence for that of the District Court. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 15, 339 Mont. 503, 172 P.3d 94. It is the District Court’s role to untangle the conflicting evidence. *In re Matter of A.F.*, 2003 MT 254, ¶ 24, 317 Mont. 367, 77 P.3d 266 (citations omitted). The District Court appropriately heard and marshalled the evidence, weighed its credibility, and thoroughly and conscientiously considered whether the Sharbonos met their burden to establish equitable rescission. The record contains substantial credible evidence supporting the court’s findings and conclusions. Thus, we conclude the District Court’s findings of fact are not clearly erroneous and its conclusions of law are correct.

¶9 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.

¶10 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ BETH BAKER

/S/ LAURIE McKINNON

/S/ JAMES JEREMIAH SHEA

/S/ DIRK M. SANDEFUR