

DA 20-0098

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 49N

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IN RE THE MARRIAGE OF:

THOMAS N. DIETRICH,

Petitioner and Appellant,

vs.

JOHN H. GODBE,

Respondent/Appellee.

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APPEAL FROM: District Court of the Eleventh Judicial District,  
In and For the County of Flathead, Cause No. DR-19-652(A)  
Honorable Amy Eddy, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Marybeth M. Sampsel, Measure Law, PC, Kalispell, Montana

For Appellee:

Therese Fox Hash, Hash, O'Brien, Biby & Murray, PLLP, Kalispell,  
Montana

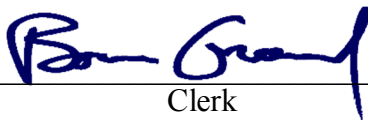
Shelly F. Brander, Kaufman Vidal Hileman Ellingson, PC, Kalispell,  
Montana

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Submitted on Briefs: January 20, 2021

Decided: February 23, 2021

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 Petitioner Thomas N. Dietrich appeals the Eleventh Judicial District Court's dismissal of his Petition for Dissolution of Marriage. Because the District Court had jurisdiction over the dissolution action, we reverse its order declining to hear the case and remand for further proceedings.

¶3 Dietrich first moved to Montana in 1989 after a college internship at Yellowstone National Park. In the mid-1990s, he found work in Kalispell and purchased a home in Whitefish. The Whitefish property currently remains in Dietrich's possession. Though Dietrich worked out of state from 2000 to 2005, he moved back to the Bozeman area in 2005 and purchased a condominium there.

¶4 In 2009 Dietrich began a relationship with John B. Godbe. As early as 2012, the pair held themselves out as partners, sharing finances and including each other in estate planning documents. The two purchased and began remodeling a house in Bozeman; Dietrich eventually sold his condominium to help finance the remodel. Dietrich and Godbe married in 2016. After marriage the two traveled extensively, leading Godbe to consider permanently living abroad. Due to Godbe's English heritage, he could become a United Kingdom citizen, and through that a European Union citizen. The parties sold their

Bozeman house and moved to Spain in 2017. Godbe obtained European Union citizenship, allowing him to stay in Spain indefinitely, but Dietrich could reside there only so long as he remained Godbe's spouse.

¶5 The couple's relationship deteriorated soon after moving to Spain. In 2019 they unsuccessfully attempted mediation through an attorney in Helena. Dietrich returned to Montana in August after the failed mediation and has resided in Montana since his return. On August 27, 2019, he filed a Petition for Dissolution of Marriage ("Petition") in Flathead County District Court.

¶6 Godbe filed for divorce in Catalonia, Spain, on October 3, 2019. On October 28, he filed in the Montana dissolution proceeding a Notice of Limited Representation and Motion to Dismiss for lack of subject matter jurisdiction. The motion to dismiss alleged that Dietrich failed to meet the 90-day residency requirement of § 40-4-104(1)(a), MCA. On November 29, Dietrich filed a motion to amend or supplement his Petition to reflect that he currently met the 90-day residency requirement. The District Court entered an Order Granting Motion for Leave to Amend Pleading before the time had run for Godbe to respond, and Dietrich filed an Amended Petition for Dissolution of Marriage ("Supplemental Petition")<sup>1</sup> on December 12. The same day, Godbe filed a motion to vacate the District Court's Order Granting Leave and to retract Dietrich's Supplemental Petition.

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<sup>1</sup> Dietrich's second petition is properly considered a "supplemental" petition, as it alleges facts that occurred after the filing of the initial petition. While this distinction is irrelevant to our analysis, we will use the correct terminology. See *Buck v. Buck*, 2014 MT 344, ¶ 16, 377 Mont. 393, 340 P.3d 546; M. R. Civ. P. 15.

¶7 The District Court did not address Godbe’s motion to vacate and retract; rather, on February 5, 2020, it issued an Order Re: Respondent’s Motion to Dismiss for Lack of Subject Matter Jurisdiction, granting Godbe’s motion to dismiss. The District Court reasoned that Dietrich did not meet the 90-day residency requirement found in § 40-4-104(1)(a), MCA, when he filed the Dissolution Petition. The District Court concluded that because Godbe filed for divorce in Spain before Dietrich moved to supplement his Petition, the matter would not be properly before it “but for the technical distinction between filing a new petition and filing a supplemental petition.” The District Court thus “decline[d] to act upon [Dietrich’s] request to dissolve the marriage” and dismissed the matter with prejudice. Dietrich appeals.

¶8 A district court’s determination of subject matter jurisdiction is a conclusion of law we review for correctness. *Buck v. Buck*, 2014 MT 344, ¶ 12, 377 Mont. 393, 340 P.3d 546 (citation omitted). We likewise review a district court’s interpretation of a statute for correctness. *Comm’r of Political Practices for Mont. v. Wittich*, 2017 MT 210, ¶ 14, 388 Mont. 347, 400 P.3d 735 (citation omitted). A district court’s granting or denial of a party’s motion for leave to amend a pleading is reviewed for abuse of discretion. *Stundal v. Stundal*, 2000 MT 21, ¶ 12, 298 Mont. 141, 995 P.2d 420.

¶9 Dietrich argues that the District Court erred when it “decline[d]” to exercise jurisdiction in the matter after he cured the defect. Godbe responds that, because the District Court granted leave to amend before Godbe’s deadline to submit a response brief, the order is a “nullity.” Godbe therefore posits that at no time did the District Court acquire jurisdiction over the matter, and it thus properly dismissed the case.

¶10 Jurisdiction is the “authority to hear and determine a case.” *City of Helena v. Frankforter*, 2018 MT 193, ¶ 8, 392 Mont. 277, 423 P.3d 581. District courts have authority to hear and determine marriage dissolution cases under Montana law. *See* Tit. 40, ch. 4, pt. 1, MCA. Section 40-4-104(1)(a), MCA, states in relevant part that a district court shall enter a decree of dissolution of marriage if it finds that “one of the parties, at the time the action was commenced, was domiciled in this state . . . and that the domicile . . . has been maintained for 90 days preceding the filing of the action.” Both parties proceed under the assumption that this 90-day residency requirement is a prerequisite for a district court to exercise subject matter jurisdiction over a dissolution proceeding. We have never so held. We conclude, however, that whether the statute imposes jurisdictional prerequisites is not dispositive of this appeal. *See generally Buck*, ¶ 15, n. 1.<sup>2</sup>

¶11 Dietrich admits that he did not meet the residency requirement when he filed his Petition. On the authority of *Buck*, however, he argues that his Supplemental Petition cured the defect. The facts in *Buck* are quite similar. There, the petitioner filed for dissolution of her marriage despite not having met the 90-day residency requirement of § 40-4-104(1)(a), MCA. *Buck*, ¶ 7. Over the respondent’s objection and motion for

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<sup>2</sup> The Commissioners’ Notes suggest otherwise. They provide in part that the 90-day residency period:

may be started at any time, but it must exist at the commencement of the action and it must have been maintained for 90 days next preceding the findings by the court. Obviously, dependent upon circumstances, it may commence, effectively, sometime before the initiation of the action. One who has just entered the forum state may commence the proceeding immediately, thus enabling the court to enter such temporary orders as are necessary to protect the rights of the parties.

Section 40-4-104, MCA, *Annotations*, Comm’rs Note (2019).

dismissal, the district court permitted her to file a supplemental petition after she had lived in Montana long enough to meet the 90-day residency requirement. *Buck*, ¶ 9. We held that M. R. Civ. P. 15(d) authorized the supplemental petition and that “any resulting jurisdictional defect was cured when [petitioner] established domicile for 90 days and then alleged as much in a supplemental pleading.” *Buck*, ¶ 20.

¶12 Dietrich initially filed a defective petition. Like in *Buck*, he later supplemented it with facts necessary to cure its defect. Dietrich’s Petition properly would be before the District Court “but for the technical distinction between filing a new petition and filing a supplemental petition.” *Buck*, ¶ 20.

¶13 The District Court reasoned that Godbe’s divorce petition in Spanish court distinguished this matter from *Buck*. Because Godbe filed his petition before Dietrich met the 90-day residency requirement, the District Court concluded that allowing this matter to proceed would “subvert the legislative purpose behind § 40-4-104(1)(a), requiring ‘that one party to the marriage has established an appropriate connection to the state’ before a court may dissolve the marriage.” Citing § 40-4-104, MCA, *Annotations*, Comm’rs Note (2014).

¶14 In *Buck*, we explained that a supplemental pleading may cure even a core subject matter jurisdiction deficiency so long as the purpose of the controlling statute is not defeated. *Buck*, ¶ 18. As the District Court recognized, the legislative purpose behind the statute is to ensure “that one party to the marriage has established an appropriate connection to the state” before a court dissolves the marriage. *Buck*, ¶ 21 (citing § 40-4-104, MCA, *Annotations*, Comm’rs Note (2014)). We pointed to additional legislative goals in *Buck*,

including increasing access to dissolution and promoting speedy, amicable adjudication. *Buck*, ¶ 22.

¶15 The “appropriate connection” the statute requires is the 90-day residency requirement; it is undisputed that Dietrich met this requirement by the time he filed his Supplemental Petition. As in *Buck*, allowing his petition to proceed does not frustrate legislative purpose. Nor does Godbe’s filing in Spain before Dietrich cured the deficiency deprive the Montana court of jurisdiction or undermine the purpose of § 40-4-104(1)(a), MCA’s, residency requirement. Dietrich lived in Montana for years, married in Montana, and while in Spain continuously owned real property and paid taxes in Montana. Dietrich had an “appropriate connection” to the State. Once he filed his Supplemental Petition, which he did with leave of court, any defect—jurisdictional or otherwise—was cured, and the District Court could proceed to adjudicate the matter.

¶16 Once established, a district court cannot “decline[] to act upon” its jurisdiction under § 40-4-104, MCA. Neither the District Court nor Godbe cites authority permitting a court to decline action in marriage dissolution proceedings. Montana’s Constitution guarantees Dietrich access to the courts. Mont. Const. art. II, § 16. The Montana Legislature has made clear that Montana’s dissolution of marriage statutes are to be “liberally construed and applied” to promote the underlying purposes of “amicable settlement of disputes” and to “make the law of legal dissolution of marriage effective for dealing with the realities of the matrimonial experience.” Section 40-1-101, MCA.

¶17 Contrast the dissolution statutes with § 40-7-202(2), MCA, of the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”). Unlike § 40-4-104, MCA, the

UCCJEA explicitly provides a court with the authority to decline to exercise jurisdiction; it requires the court to examine a host of considerations and to make certain findings before it does so. Sections 40-7-108, 40-7-202(2), MCA. Section 40-4-104, MCA, contains no language expressly authorizing a court to decline jurisdiction. Indeed, the plain language of the statute implies the opposite: “(1) The district court *shall* enter a decree of dissolution of marriage if: . . . .” Section 40-4-104(1), MCA (emphasis added). At the time of its order of dismissal, the District Court had subject matter jurisdiction over the proceeding. It therefore erred as a matter of law by declining to act upon that jurisdiction.

¶18 Finally, Godbe argues that because the District Court granted Dietrich’s motion for leave to supplement before Godbe filed his response brief objecting to the motion, the District Court’s Order Granting Leave is premature, null, and void. In support of this argument, Godbe cites only Rule 2(e) of the Uniform District Court Rules, which reads:

When Motion Deemed Submitted. Unless oral argument is ordered, or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of any of the applicable time limits [for briefing] set forth above. If oral argument is ordered, the motion will be deemed submitted at the close of argument unless the court orders additional briefs, in which case the motion will be deemed submitted as of the date designated as the time for filing the final brief.

Godbe points us to no authority, in the rule or otherwise, that an order entered before the motion is deemed submitted is “null and void.” We have interpreted subsection (b) of the same rule—which deems a motion to be well-taken by an opposing party who files no response—as allowing the lower court discretion to either deny or grant unsupported or unanswered motions. *Chapman v. Maxwell*, 2014 MT 35, ¶ 10, 374 Mont. 12, 322 P.3d 1029 (citing *Moody v. Northland Royalty Co.*, 286 Mont. 89, 94, 951 P.2d 18, 22 (1997)).



The District Court should have waited until Godbe filed his response brief before issuing an order on the motion to supplement. Notwithstanding this error, district courts have broad discretion to grant parties leave to file amended or supplemental pleadings before trial. *Stundal*, ¶ 13 (“Rule 15(a), M. R. Civ. P., is to be interpreted liberally, making the allowance of amendments the general rule and denials the exception.”); *Buck*, ¶ 16 (“The distinction between an amended and a supplemental petition is often of little importance, since leave to amend or supplement a petition is based upon the same criteria.”). Godbe presents no argument that the District Court abused its discretion in granting Dietrich leave to supplement his Petition, and nothing in the record leads this Court to reach that conclusion. In light of our decision in *Buck*, the District Court’s decision to allow Dietrich’s supplemental pleading was within its discretion.

¶19 Because we conclude that the District Court erred in dismissing the matter, we do not consider Dietrich’s argument that it should not have dismissed with prejudice.

¶20 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. Our decision in *Buck* controls the resolution of this appeal. The District Court erred by “declining to act” upon Dietrich’s Petition and dismissing the matter. We therefore reverse and remand for further proceedings.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH  
/S/ LAURIE McKINNON  
/S/ INGRID GUSTAFSON  
/S/ DIRK M. SANDEFUR