

09/02/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 21-0436

Received via email 08.03.2021

Hon. Robert G. Olson
District Court Judge
Ninth Judicial District
226 - 1st Street South
P.O. Box 822
Shelby, MT 59474-0822
(406) 424-8360

MONTANA TWENTIETH JUDICIAL DISTRICT COURT, SANDERS COUNTY

<p>CHARLOTTE MANDICH,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p>MARK AND KATHLEEN FRENCH,</p> <p style="text-align: right;">Defendants.</p>	<p>Cause No. DV-19-87</p> <p style="text-align: center;">ORDER GRANTING MOTION TO DISMISS</p>
---	--

On June 28, 2021, Plaintiff, Charlotte Mandich (hereinafter Mandich), filed a Motion to Dismiss her Complaint pursuant to Rule 41(a)(2), M.R.C.P. The Court granted Mandich's summary judgment on her declaratory relief claim and has entered injunctive relief. The sole claim is that Defendants, Mark and Kathleen French (hereinafter Frenches), materially breached the shared well agreement. Frenches oppose the Motion to Dismiss.

Rule 41(a)(2), M.R.C.P. states as follows:

(a) Voluntary Dismissal.

.....

(2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under paragraph (2) is without prejudice.

.....

Mandich prevailed on her request for injunctive relief. As a result, she has chosen not to pursue her claim that Frenches materially breached the shared well agreement. In light of her advanced age, her desire not to spend the next few years litigating this matter is understandable.

Frenches assert that in filing this motion, Mandich is admitting her claim for breach of contract is without merit and not worth pursuing. Frenches further assert that justice would be promoted by awarding them attorney fees and costs.

The Court disagrees with the Frenches. Costs and fees they have incurred in this matter are a direct result of their own actions. They attempted to use the shared well to provide water to a new retail development they planned to build. When this plan failed, they attempted to file a barrage of counterclaims against Mandich nearly 14 months after their original answer was filed. The timing of Defendants' request to amend their answer to include these counterclaims is suspect. Shortly after losing on Plaintiff's injunctive relief claim, they moved to amend their answer to include 7 counterclaims, none of which were brought up previously. It appeared disingenuous to the Court at that time and nothing has changed. It is a conscious attempt to keep the 98-year-old Mandich in Court as long as possible in hopes she will ultimately agree to resolve this case on Defendants' terms.

Based upon the foregoing, good cause appearing:

IT IS HEREBY ORDERED that Plaintiff's Motion to Dismiss Count III of her Complaint is GRANTED.

DATED this 2 day of July, 2021.

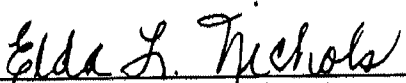


ROBERT G. OLSON, District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2021 a true and correct copy of the foregoing document was duly served upon the following persons by depositing a copy of the same in the United States mail, or by electronic transmission as indicated below:

Jesse Kodadek Elizabeth W. Erickson Worden Thane P.C. 321 W. Broadway, Suite 300 Missoula, MT 59802 jkodadek@wordenthane.com eerickson@wordenthane.com	<input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Electronic Transmission <input type="checkbox"/> Facsimile Transmission
Graham Coppes Emily Wilmott Ferguson Law Office, PLLC PO Box 8359 Missoula, MT 59807 grahamc@fergusonlawmt.com emilyw@fergusonlawmt.com	<input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Electronic Transmission <input type="checkbox"/> Facsimile Transmission



Elda L. Nichols, Judicial Assistant to the
Hon. Robert G. Olson, District Judge
Ninth Judicial District Court