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FILED

05/24/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 22-0182

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 22-0182

BROADWATER COUNTY, MONTANA,

Plaintiff and Appellee,

and

HELENA INDEPENDENT RECORD,

Defendant and Appellee,

v.

PERSON WITH AN INTEREST IN THE
RELEASE OF CONFIDENTIAL CRIMINAL
JUSTICE INFORMATION PERTAINING TO
THE INVESTIGATION AND PROSECUTION
OF JASON ELLSWORTH: JASON
ELLSWORTH,

Defendant and Appellant.

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ORDER

Helena Independent Record (the IR), initially designated as one of the Defendants and Appellants in this appeal, has moved this Court to realign the parties, designate the IR as an Appellee, and grant the IR leave to file an Answer Brief in accordance with M. R. App. P. 12(2). Appellant Jason Ellsworth has responded in opposition to the IR's motion.

In its filing before this Court, the IR explains that this matter began after it asked Plaintiff and Appellee Broadwater County to release certain confidential criminal justice information (CCJI). Broadwater County then initiated a declaratory judgment action in accordance with § 44-5-303(5), MCA. Pursuant to § 44-5-303(5)(a)(ii), MCA, it named the IR as a defendant since the IR was "known to the prosecutor [to have] requested the [CCJI]." The County also named Jason Ellsworth, the subject of the CCJI, as a defendant.

In the declaratory judgment action, the County asked the District Court to conduct an in camera review of the CCJI and make determinations in accordance with § 44-5-303(5)(a)(v), MCA.

The County never served the IR with a summons or a copy of the complaint, nor was the IR served with any subsequent motions, briefs, or orders, and the IR did not appear in the District Court case. The District Court proceeded to issue an order in the matter. According to the present motion, the IR only learned that the District Court had issued an order disposing of the case after Ellsworth filed the present appeal. The IR asserts that its lack of participation and the fact that Broadwater County has declared itself disinterested has caused “an anomalous circumstance—there is no adversity in this appeal and there is no one to defend the District Court’s decision.” The IR therefore requests to participate in the appeal and for realignment of the parties in order to defend the District Court’s decision.

Ellsworth asserts that the IR has not cited a Rule of Appellate Procedure which would allow it the relief sought. Ellsworth asserts that the IR, while not properly served under M. R. Civ. P. 4, was aware of the District Court proceedings and slept on its rights by taking no action.

Under M. R. App. P. 2(1)(a), an Appellee is “[t]he party who usually responds to an appeal, seeking affirmance of the district court.” Irrespective of the proceedings below, the IR remains a named defendant in this action and a party to this appeal. Indeed, Ellsworth’s Notice of Appeal identifies the IR as a “Defendant[] and Appellant[].” As a party to this appeal, the IR is seeking affirmance of the District Court’s order, and is appropriately an appellee pursuant to M. R. App. P. 2(1)(a).

M. R. App. P. 2(4) provides, in relevant part, “[o]n the motion of a party, or on the court’s own motion, the caption of a pending cause may be modified to more accurately reflect the actual alignment or status of a party.” We have modified the caption of this pending matter accordingly, to reflect the actual alignment of the parties.

IT IS ORDERED that the Helena Independent Record is REALIGNED as an Appellee in this matter.

IT IS FURTHER ORDERED that the caption in this appeal is MODIFIED as set forth in the caption of this Order.

IT IS FURTHER ORDERED that the briefing schedule of this matter will proceed as set forth in the applicable Montana Rules of Appellate Procedure.

The Clerk of Court is directed to mail copies hereof to all counsel of record.

DATED this 24th day of May, 2022.



Chief Justice



Justices