

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0279

IN RE THE MARRIAGE OF:

MIKI ADAMS,

Petitioner and Appellee,

and

DIRK ADAMS,

Respondent and Appellant.

APPELLEE'S RESPONSE BRIEF

On Appeal from Montana Sixth Judicial District Court, Park County

Cause No. DR-34-2020-43

Before the Honorable Yvonne Laird, Presiding.

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STATEMENT OF THE ISSUES

- 1. Did the District Court err by denying Dirk, a vexatious litigant, leave to file his Rule 60(b)(3) motion?**
- 2. Did the District Court err by concluding Dirk’s Rule 60(b)(3) motion was meritless?**
- 3. Did the District Court err by denying Dirk leave to file his proposed Rule 60(b)(3) motion, even though the motion was untimely?**

STATEMENT OF THE CASE

This is the third appeal filed by Appellant Dirk Adams stemming from the dissolution of marriage proceeding involving Dirk and Appellee Miki Adams.

After a two-day hearing held on March 31, 2021 and April 1, 2021, the District Court issued its *Findings of Fact, Conclusions of Law, and Decree of Dissolution* (“Decree”) on September 27, 2021. (Doc. 280). Notice of entry of the District Court’s judgment was filed on October 6, 2021. (Doc. 283).

This Court affirmed both the Decree and the Court’s No-Contact Order issued as part of its April 18, 2022 *Order on Post-Trial Motions and Issues*, (Doc. 391), in *In re the Marriage of Miki L. Adams and Dirk S. Adams*, 2023 MT 95N (May 23, 2023).

In his third appeal, Dirk seeks review of the District Court's April 19, 2023 Order, which denied him leave to file his Rule 60(b)(3) motion seeking recovery against Miki for her alleged fraud regarding the amount of her legal fees paid, and concluded that Dirk's proposed Rule 60(b)(3) motion was an improper attempt to circumvent the Court's order of protection. (Doc. 489).

STATEMENT OF FACTS

On April 19, 2023, Dirk filed *Respondent's Motion for Permission to File his MRCP 60(b)(3) Motion*. Along with his request, Dirk submitted a copy of his proposed Rule 60(b)(3) motion. (Doc. 488). Dirk's proposed Rule (60)(b)(3) motion sought to reopen the Decree based on Miki's alleged "fraud" in lying about her income, overstating her expenses, and failing to disclose the actual amount of her legal fees which Dirk was ordered to pay to Miki pursuant to the Decree. (Docs. 488; 280, at p. 39).

Dirk's attempt to file his Rule 60(b)(3) motion came over two years after the March 31, 2021 and April 1, 2021 bench trial, and a year and a half after the District Court's September 27, 2021 Decree was issued and notice of entry of judgment was filed. (Docs. 280, 281).

In the intervening time between the two-day bench trial and Dirk's Rule 60(b)(3) request, Dirk had filed various motions including three other motions to

amend the Decree. (Docs. 281, 301, 308). Dirk had also been declared a vexatious litigant due to his numerous post-trial filings in the dissolution action despite a pre-filing order being in place, and for his pursuit of other litigation against Miki and her family members. (Doc. 391, at 9). Dirk also had a five-year No-Contact Order entered against him in favor of Miki. (Doc. 391, at 9). The No-Contact Order was later amended to include a Permanent Order of Protection against Dirk to protect Miki from Dirk’s continued contact and harassment. (Doc. 481).¹

On April 19, 2023, the District Court denied Dirk leave to file his Rule 60(b)(3) motion. (Doc. 489). The District Court further noted that Dirk’s proposed Rule 60(b)(3) motion submitted with his request for leave to file was a “clearly frivolous and a blatant attempt to circumvent the Court’s order of protection.” (Doc. 489, at 2). Dirk appeals.

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STANDARDS OF REVIEW

A district court’s discretionary rulings involving “trial administration issues, post-trial motions, and similar issues” will not be overturned absent an abuse of

¹ Dirk’s second appeal pending before this Court concerns the entry of the Permanent Order of Protection. *See In re the Marriage of Miki Adams and Dirk Adams*, DA 23-0219.

discretion. *Moore v. Imperial Hotels Corporation*, 285 Mont. 188, 190, 948 P.2d 211, 213 (1997).

“The standard of review of a trial court’s decision to grant or deny a Rule 60(b), M. R. Civ. P. motion, depends upon the issues involved. “Where . . . there is a discretionary appraisal or weighing by the district court of the facts of the case,” this Court reviews the lower court’s determination for an abuse of discretion. *In re Marriage of Hopper*, 1999 MT 310, ¶ 19, 297 Mont. 225, 991 P.2d 960.

“In evaluating abuse of discretion, [this Court] look[s] to whether the district court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice.” *In re Inquiry into A.W.*, 2000 MT 311, ¶ 4, 302 Mont. 447, 14 P.3d 1252.

SUMMARY OF ARGUMENT

Dirk continues his attempts to re-litigate the Decree by seeking review of the District Court’s order denying him leave to file his Rule 60(b)(3) motion. Given Dirk’s status as a vexatious litigant, and the volume of post-trial filings and issues raised by Dirk seeking to upend the Decree, the District Court acted well within its discretion by denying him leave to file his motion.

The District Court further acted within its discretion when it reviewed the substance of Dirk's proposed Rule 60(b)(3) motion and determined the motion was meritless and motivated by an improper purpose of continuing to use litigation to contact and harass Miki. Dirk cannot show the District Court's determination was an abuse of discretion.

Lastly, the District Court did not err by denying Dirk leave to file his proposed Rule 60(b)(3) motion because the motion was untimely.

ARGUMENT

1. Did the District Court err by denying Dirk, a vexatious litigant, leave to file his Rule 60(b)(3) motion upon determining the motion was submitted for an improper purpose?

The District Court maintains inherent authority to issue rulings governing post-trial motions and proceedings. *See Moore*, 285 Mont. at 190, 948 P.2d at 213. A party who files a post-trial Rule 60(b) motion as a substitute for an appeal a party should have taken, or as a request for the district court to simply make a different factual determination, constitute improper uses of Rule 60. *See Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 28, 338 Mont. 423, 166 P.3d 451.

The District Court reviewed Dirk's Rule 60(b)(3) motion and determined it was an improper attempt to circumvent the Permanent Order of Protection issued against Dirk based on his use of litigation to contact and harass Miki.

The District Court further appropriately exercised its inherent authority and discretion to deny Dirk leave to file his motion in light of Dirk being declared a vexatious litigant. As this Court admonished a similarly vexatious Plaintiff:

[b]y his various *pro se* actions, [Plaintiff] has caused the courts of Montana some considerable difficulty. . . . [W]hile his misdirected efforts have caused the courts difficulty, the real tragedy is that he has cost himself a considerable amount of money and wasted time in his vain pursuits. However much we desire to keep the courts open to all persons seeking to adjust their rights, duties, and responsibilities, we must also take into account the effect that his actions bring on other parties to his suits. In this case, the respondents are entitled to their peace.

Lussy v. Bennett, 214 Mont. 301, 309, 692 P.2d 1232 (1984).

The District Court's order denying Dirk leave to file his Rule 60(b)(3) motion in light of his behavior during the proceedings was not arbitrarily rendered, without employment of conscientious judgment, nor did it exceed the bounds of reason. *In re Inquiry into A.W.*, ¶ 4. The District Court's order should be affirmed.

2. Did the District Court err by concluding Dirk's proposed Rule 60(b)(3) motion was meritless?

Dirk argues his Rule 60(b)(3) motion should have been granted and the Decree subsequently reopened pursuant to § 40-4-253, MCA, because Miki failed to disclose marital assets in her final declaration of disclosure and during her trial testimony. Specifically, Dirk accuses Miki of lying about her income and expenses,

and failing to disclose the actual amount of her legal fees of which Dirk was ordered to pay a portion under the Decree. (Appellant’s Op. Br., at 22-25).

Section 40-4-253(4), MCA, provides that if a party fails to disclose an asset or liability, the district court may, without taking into consideration the equitable division of the marital estate, award the undisclosed asset to the opposing party. Section 40-4-253(5), MCA, further allows a district court to set aside a judgment in the event a party has committed perjury in a final declaration of disclosure.

Rule 60(b)(3) serves as the procedural mechanism for the district court, “[o]n motion and just terms,” to relieve a party from a final judgment, order, or proceeding” where there is a showing of “fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party”

Extrinsic fraud exists in situations where a court “received evidence collaterally in such a way that the court did not or could not have decided the issue,” such as when a party commits fraud to “prevent the unsuccessful party from having a trial or from presenting his case fully, such as keeping him away from the court by false promise of compromise” *Castonguay v. Estate of Polson*, 2005 MT 265, ¶ 10, 329 Mont. 103, 122 P.3d 1208. “It must be such fraud as denied the adversary an opportunity to have a trial or to fully present his side of the case in order to constitute grounds for reopening the decree.” *Hopper*, ¶ 25.

By contrast, “[f]alse or fraudulent representations or concealments made by a party during the court proceedings constitute intrinsic fraud.” *Hopper*, ¶ 24 (citing *Falcon v. Faulkner*, 273 Mont. 327, 332, 903 P.2d 197, 200 (1995)). “[T]his Court has repeatedly held that fraud between the parties, such as perjured testimony at trial, does not rise to the level of fraud upon the court.” *Hopper*, ¶ 24 (citations omitted).

Dirk’s allegations that Miki lied in her final financial disclosure and committed perjury at trial regarding her net worth are allegations of intrinsic fraud. “Intrinsic fraud—fraudulent representations or concealments made during the court proceedings—is not grounds for reopening a decree or judgment.” *Falcon*, 273 Mont. at 332, 903 P.2d at 200.

The District Court reviewed Dirk’s motion and determined that not only was it submitted for the improper purpose of attempting to circumvent the Permanent Order of Protection, but that the substance of the motion was meritless. Dirk could not show to the District Court then, and cannot establish to this Court now, that Miki engaged in any action, intentional or otherwise, that prevented Dirk from having a fair submission of the issues in controversy. *See Hopper*, ¶ 25.

Because Dirk failed to show Miki engaged in fraud when she filed her final declaration of disclosure and testified at trial regarding her income, assets, and liabilities at trial, the District Court did not abuse its discretion in denying Dirk’s

Rule 60(b)(3) motion and declining to reopen a Decree that had already been resolved. *See Hopper*, ¶ 19. The District Court’s order should be affirmed.

3. Did the District Court err by denying Dirk leave to file his proposed Rule 60(b)(3) motion, even though the motion was untimely?

A Rule 60(b)(3) motion “must be made . . . no more than a year after the entry of the judgment or order or the date of the proceeding.” M. R. Civ. P. 60(c)(1). Dirk titled his motion to state it was made within a year of the April 18, 2022 *Order on Post-Trial Motions and Issues*, but the issues raised in his proposed Rule 60(b)(3) motion pertain to Miki’s trial testimony and the Court’s September 27, 2021 Decree. (Doc. 280). Because Dirk did not request leave to file his Rule 60(b)(3) motion until April 19, 2023, two years after the bench trial and over a year and a half after the Decree was issued and Notice of Entry of Judgment was filed, Dirk’s motion was untimely.

While the District Court did not expressly deny Dirk’s proposed Rule 60(b)(3) motion as untimely in its order denying Dirk leave to file the motion, absent apparent clear error, this Court “will uphold the decision below unless the court abused its discretion.” *Bock v. Smith*, 2005 MT 40, ¶ 14, 326 Mont. 123, 107 P.3d 488 (citations omitted). This Court will further “affirm a district court even if it reached the right result for the wrong reason.” *In the Matter of P.D.L.*, 2004 MT 346, ¶ 13,

324 Mont. 327, 102 P.3d 1225 (citations omitted). The District Court’s order denying Dirk leave to file his proposed Rule 60(b)(3) motion should be affirmed.

MOTION FOR ATTORNEY FEES AND COSTS

Under M. R. App. 19(5), this Court may “award sanctions to the prevailing party in an appeal . . . determined to be frivolous, vexatious, filed for purposes of harassment or delay, or taken without substantial reasonable grounds.” Such sanctions “may include costs, attorney fees, or such other monetary or non-monetary penalty as the Supreme Court deems proper under the circumstances.” M. R. App. 19(5). M. R. App. 19(3) further entitles a prevailing party to costs incurred on appeal, including “the costs of reproducing briefs and necessary appendices.

This Court has previously awarded attorney fees where one party shows a “significant disdain for the integrity of the judicial process.” *Lee v. Lee*, 2000 MT 67, ¶ 66, 299 Mont. 78, 996 P.2d 389 (quotations omitted). This Court has also stated that “while pro se litigants may be given a certain amount of latitude in their proceedings, they may not proceed in such a fashion as to abuse the judicial process and prejudice the opposing party’s interests.” *Lee*, ¶ 66 (citations omitted).

Here, Dirk has presented no legal or factual grounds for his third appeal. He has proceeded throughout this case with disdain for the integrity of the judicial process by disregarding multiple judicial orders, and continues to delay final

resolution of this case to prejudice Miki's interests. Due to his behavior and lack of reasonable legal or factual basis for bringing this appeal, Miki respectfully requests that this court order Dirk to reimburse her for the fees and costs she incurred in defending against this frivolous appeal.

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CONCLUSION

Based on the foregoing, Miki respectfully requests the Court affirm the District Court's decision regarding Dirk's Rule 60(b)(3) motion. Miki further respectfully requests that Dirk be ordered to reimburse her for the fees and costs she incurred in responding to this appeal, pursuant to M. R. App. 19(3) and (5).

//

Respectfully submitted this 30th day of November, 2023.

/s/ Adrienne Ellington
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CERTIFICATE OF COMPLIANCE

Pursuant to M. R. App. 11, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes and for quoted and indented material; and the word count is not more than 5,000 words, excluding the Certificate of Service and Certificate of Compliance.

/s/ Adrienne Ellington
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CERTIFICATE OF SERVICE

I, Adrienne R. Ellington, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 11-30-2023:

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