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01/31/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0060

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-0060

David E Orr,

Petitioner,

v.

THIRTEENTH JUDICIAL DISTRICT COURT, LINCOLN COUNTY,
HON. MATTHEW J. CUFFE,

Respondent.

**EMERGENCY PETITION FOR WRIT OF SUPERVISORY CONTROL
AND REVERSAL OF WRONGFUL TRANSFER OF PROPERTY**

From the Montana Thirteenth Judicial District Court Lincoln County
Cause No. DV-22-18 Before Hon. Matthew J. Cuffe Under Appeal
In The Supreme Court of The State of Montana Case No. DA 23-0699

David E. Orr
957 Warland Creek Rd.
Libby, MT 59923
Phone: 406-293-3591
daveyo57@gmail.com

PRO SE FOR PETITIONER
And APPELLANT

W. Bridger Christian, LL.M.
CHRISTIAN,SAMSON & BASKETT
310 W. Spruce St.
Missoula, Montana 59802
Phone: 406-721-7772
bridger@CSBlawoffice.com
ATTORNEY FOR APPELLEE

FILED

JAN 31 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

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STATEMENT OF THE ISSUES

1. A Complaint was filed on February 15, 2022 by Plaintiff Tiffany House. The complaint accused Defendant, Mr. Orr of Fraud for executing a completely legal Quit Claim Deed on July 1, 2021. Mr. Orr answered the complaint on June 10, 2022. Plaintiff filed a motion for summary judgement on May 30, 2023 on grounds that there were no genuine issues of material facts, because Orr did not respond to the motion, or answer discovery requests. He did respond in an email. Since Fraud is a very serious crime, and it brings a criminal element into this case, isn't Mr. Orr, (Natural Person) protected by the Fifth amendment of the Constitution of the United States of America, and Article II Section 25 of the Montana State Constitution under self-incrimination?

2. Orr received a Scheduling Order: Jury Trial notice on September 29, 2022. A pretrial was set for August 18, 2023, 10 months later. Orr was away from home the last week of July, 2023 to the second week of August, 2023. When he arrived home he opened his mail. In it were 2 letters from District Court. One dated July 26, 2023, and one dated July 28, 2023. The letter dated July 26, 2023, stated there was a change in the schedule, moving the pretrial to August 22, 2023. The second letter was dated July 28, 2023. It was a District Court Order granting Plaintiffs motion for Summary Judgment on July 28, 2023. It also, ordered Mr. Orr to sign the property over in a quit claim deed, to Plaintiff Tiffany House, by August 18, 2023. This was the original date set for the pretrial. Orr received no prior notice from the district court on this issue. Why was there no pretrial conference per Rule? Why was there such a sudden change in the schedule? Why such a short notice? Should Orr have his property taken away without a Hearing, or stepping one foot in the Courtroom? Did the District Court err on granting Plaintiff/Appellee Tiffany House's motion for summary judgement? Were Mr. Orr's Constitutional Rights, guaranteed by the United States Constitution, V amendment, VII amendment, and the Montana State Constitution, Article II Section 26, and 27, violated, under due process of law, and his right to a jury trial? The jury trial that Plaintiff asked for in the first place?

(Continued)

3. Mr. Orr filed an appeal to this Honorable Court on August 17, 2023. He did not sign the property over to Plaintiff with a quit claim deed. Instead he filed a Stay of Execution on August 18, 2023. He went to the rescheduled pretrial on August 22, 2023. He brought two folders of papers, {Evidence}. Appellee's Council, Mr. Christian was on the phone. The Honorable Matthew J. Cuffe, presiding. He greeted Mr. Christian and Mr. Orr, and then said, to Mr. Christian, on the phone, "Mr. Orr filed a motion, and I no longer have any jurisdiction over this matter". No one was interested in looking at the papers Orr had brought with him. The judge spoke with Christian and then mentioned a few things to Orr, and then dismissed him. On or about November 28, 2023 Orr received papers from District Court denying his Motion for Stay, and Orders that the property had been transferred to Plaintiff, Tiffany House. Also, a notice from Appellate Court stating his Appeal was dismissed without prejudice for being too early, which was correct. Why was the decision made denying the Stay, seventy seven days later, and the property transferred to Plaintiff, after Orr was told by the District Court, they no longer had any jurisdiction? The doors of Justice had been shut, and were no longer accessible to Mr. Orr, since August of 2023.

4. In the Complaint, Plaintiff states the real property in controversy was acquired through a Quit Claim Deed by Coggeshall from Warland Ridge Ventures, LLC., a Montana limited liability company. This LLC belonged to Mr. Orr. Plaintiff, also states in the original complaint, that a true and correct copy of that deed was attached hereto as Exhibit "A." The Quit Claim Deed was executed by Orr. It was filed with Coggeshall as a Joint Tenancy with right of survivorship, involving a personal loan. Plaintiff had no right to it whatsoever. With all due respect, did an experienced Attorney, and a District Court Judge ignore, or misinterpret a legal property deed, that clearly stipulates its meaning, its binding protection, and other legalities? Doesn't this Quit Claim Deed make this case a complete mistake of law, and a total gross injustice?

STATEMENT OF THE CASE

1. This Case is about, Count I: Quiet Title, Count II: Fraudulent Transfer. It involves a 1.937 acre parcel of property in Libby, Lincoln County, Montana. Appellant, Mr. Orr has owned this property for 20 years, since 2004. In 2009 he got a personal loan from his friend, Coggeshall. Orr had already been listed as Totally and Permanently Disabled. However, his condition had only worsened, and he was waiting for his Social Security, & Union disability papers to become finalized. This would give him the Medical Insurance that he needed, so he could have the back, and shoulder surgeries, that he desperately needed! Orr executed a Quit Claim Deed as Joint Tenancy with Right of Survivorship with Coggeshall, using the aforementioned property. This was for collateral in case of a fatal outcome, which is a well known possibility with any surgery, in the medical profession. It could also happen in any other situation. After Orr's surgeries, healing, and time passing, Orr paid back the loan. Then, on mutual agreement, they quit claimed it back to Orr. This dissolved the joint tenancy with right of survivorship, and giving full legal ownership back to Mr. Orr. Its as simple as that. There is no smoking gun here, in this completely legal transfer of property. Unfortunately, my Very Good Friends, the Coggeshall's ended up in a divorce, in 2012. Then he went down a very bad road. Mr. Orr is sorry he didn't live up to his obligations to his three wonderful and precious girls, and his wife Tiffany. However, Mr. Orr is also appalled by this erroneous lawsuit, that House has perpetrated upon Orr. This is merely an attempt for a monetary gain, with no regards for the truth, law, or the pain and misery, she has caused Orr.

(Continued)

2. The District Court, mistakenly granted Summary Judgement to House on July 28, 2023. Orr had not received any correspondence from the court about the proposed summary judgement. He received a letter from House's Council asking for his opinion on a Summary Judgement. The letter said Orr could respond with the self addressed envelope, or in an email. Orr responded with an email. This Court has that email. Then on November 3, 2023 the court denied a stay of execution with an Order, and transferred the property to House, with a separate Order. Until then, the only papers Orr had received from district court was the scheduling order on September 30, 2022! No Hearings. No Pretrial Conference. No Trial. Just wrongful Transferring and confiscation of Property from an American Citizen. None of this should have occurred. Orr just hopes justice will prevail.

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STATEMENT OF FACTS

Appellant, Mr. Orr would like to first mention, there is no trial transcript. because there never was a trial. There is one for a seemingly, pretrial. This court has that transcript. Orr is doing the best he can, to follow the rules he received in the Handbook for Pro Se Litigants. He will try to avoid repetition, as this court has most of this information from District Court, and in his Response to Motion to Dismiss and Sanctions.

In the Original Complaint, House states that Coggeshall acquired the property from Warland Ridge Ventures, LLC, as evidenced by a Quit Claim Deed recorded May 21, 2009 in Volume 325 Page 763 of Deed Records, Lincoln County. A true and correct copy of this deed is attached hereto as Exhibit "A". {Complaint, District Court, Doc 1, page 2, prg 10.} House also claims she couldn't sell the property because it was still in Coggeshall's name. {Complaint, District Court, Doc 1, page 3 prg. 15, 16}. On December 8, 2020, the Maricopa Court authorized her to transfer the deed to the property into her name. {Complaint, District Court, Doc, 1, page 3, prg 17}. House states on July 1, 2021 Coggeshall executed a Quit Claim Deed transferring his interest in the property to Orr, in defiance of the above cited Order. {Complaint, District Court, Doc, 1, page 4 prg. 18}. Then House claims Orr was aware of the ongoing legal proceedings between Plaintiff (House) and Coggeshall, and was aware that Plaintiff, not Coggeshall, was entitled to the Property due to the Judgement and Order, from the Maricopa, Arizona Court. {Complaint, District Court, Doc, 1, page 4, prg. 19}.

COUNT 1 QUIET TITLE

{Complaint, District Court, Doc, page 4, prgs. 20,21,22,23,24}

House claims these are all warranted because a Judge in Arizona awarded the Property to her. Apparently, he didn't read the Quit Claim Deed, either.

COUNT II; FRAUDULENT TRANSFER

{Complaint, District Court, Doc, pages 4,5,prgs. 25,26,27,28.}

Here, House's council, W. Christian has accused Orr of Fraud. Fraud is a serious crime. Christian states Orr's fifth amendment rights are not being violated.

{Response Brief in Opposition To Orr's Motion for Stay, District Court, Doc, 24.000, e. page 8, 09/06/2023.}

Exhibit "A" States at the top **Quit Claim Deed** Joint Tenancy. In the middle of the Deed it very clearly states its meaning. TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), as joint tenants with right of survivorship **(and not as tenants in common)** and to the heirs and assigns of the survivor of said named joint tenants **forever**. And the said Grantor(s) do(es) hereby covenant to and with the said Grantees, that he, the **owner(s)** in fee simple of said premises; that they are free from all incumbrances and they he will warrant and defend the same from all lawful claims whatsoever.

This Lawsuit should have never proceeded, from this point going forward, based on a decision by an Arizona Judge, in a divorce case in Arizona. Whether or not the Arizona Judge actually saw this Deed, is unknown. Montana law defines this Deed as, 70-20-310 MCA. Coggeshall did not take sole ownership when we signed the Deed on May 5, 2009. Warland Ridge Ventures was a single person LLC, belonging to Mr. Orr, and he executed the Deed as security for a personal loan, from Coggeshall. This gave equal interest, not ownership. It can be severed with a mutual agreement between the two parties, by filing a Quit Claim Deed at anytime they so choose. In a divorce situation a 3rd party is not effected after a transfer back. 72-2-814, (3)(7)(a) MCA.

House claimed she couldn't sell the property to Duane Rhodes for \$30,000 because it was still in Coggeshalls name. So, she went back to the Arizona Judge and he authorized her to put it in her name. He had no right to authorize her to do so. As stated, that was the sole reason why she couldn't sell the property to Duane Rhodes, because it was still in Coggeshall's name. House needs to be directed to give an answer, under oath, what prevented her from doing so. There is a reason, and it is a Key part of these proceedings. Otherwise she would have put it in her name, and continued the sell to Duane Rhodes. Perhaps this Court can find out from the Title Company in Libby, Montana. Orr tried, but they couldn't tell him because of privacy issues. Orr initiated his Quit Claim Deed seven months later on July1, 2021. Orr was Not aware of the on going legal proceedings between Coggeshall and House, or aware that House was awarded the property from an Arizona Court. Regardless, it was a wrong and unlawful decision to award her the property, without knowing the content of a legal property Deed.

(Continued)

The District Court granted Plaintiff's Motion for Summary Judgement on August 18, 2023. (Dkt. 15). The Court denied Orr's Motion for Stay of Execution of Summary Judgement during Appeal {First Appeal} (August 18, 2023), on (November 3, 2023). *See* (Dkt. 28) The Court ordered the transfer of Property to Plaintiff. *See* Order Transferring Real Property (Dkt. 29).

ARGUMENT

I STANDARD OF REVIEW

This case has been brought with the absence of true facts and Prejudicial Error. An error of the law implies the failure to correctly apply the law, leading to a violation of the litigants rights. Appellant David E. Orr respectfully requests this Honorable Court to intervene under Supervisory Control and Reverse any and all District Court Orders, Claims, and Judgements against Mr. Orr. The transfer of property should be reversed and Quiet Title back to Appellant, Mr. Orr and any future claims or proceedings related to case be Quashed. House and her council have accused Orr of Fraud and many other allegations of wrong doing. Orr's Constitutional Rights have been violated in numerous ways.

Pursuant to Article VII, Section 2(2), Supervisory control enables this Court to direct the course of litigation where the district court is proceeding based on a mistake of law, or willful disregard of it, are doing a gross injustice, and the remedy by appeal is inadequate." *Truman v. Mont. Eleventh Jud. Dist. Ct.*, 2003 MT 91, 13, 315 Mont. 165, 68 P.3d 654; Mont. R. App. P. 14(3). "Judicial economy and inevitable procedural entanglements" are appropriate reasons for this Court to issue a Writ of supervisory control (*id.* 115), as is prevention of extended and needless litigation. *State ex rel. First Bank Sys. v. Dist. Court*, 240 Mont. 77, 84-85, 782 P.d 1260, 1264 (1989).

The exercise of supervisory control is appropriate when **any** of the following three factors are present: "(1) Constitutional issues of major state-wide importance are involved; (2) The case involves purely legal questions of statutory and constitutional construction; and (3) Urgency and emergency factors exist, making the normal appeal process inadequate." *Plumb v. fourth judicial Dist. Court, Missoula Co.*, 279 Mont. 363, 369, 927 P.d 1011 (1996) (superceded by statute on other grounds); Mont. R. App. 14(3).

House states in Motion To Dismiss & Request For Sanctions, that Orr's appeal was to early. This was proven to be inaccurate under M.R. App. P. 6(3)(h). In House's motion there are many accusations of wrong doing and numerous allegations of basic Character assassination directed at Orr. House has never provided any real evidence. From the beginning Orr admits he didn't know a lot about Court Regulations, Rules, and Procedures. Orr knew that Attorneys conferred with each other and then there would be a day in Court. Surely, an issue as serious as confiscating someone's property, would warrant a hearing of some kind. Especially one that Orr had owned for 20 years. House says this Appeal is only for these Orders and the Summary Judgement and Transfer of Property are moot. This is mentioned in these Orders on Appeal. Orr is asking this Honorable Court to address the overall substance of this case. In an action tried without a jury and the error was made in a court order (*see* FRCP 51(a); or, (ii) the error constitutes a "plain error" under FRCP 52(b). House's Summary Judgement Motion was predicated on Orr not answering Discovery. House has accused Orr of Fraud. House doesn't see how Orr's Rights were violated. Fraud is crime. Orr, again Invokes The *Fifth Amendment* which protects Orr from self incrimination. It not only permits a person to refuse to testify in a criminal trial which he is a Defendant, but also it privileges him not to answer questions put to him in any other proceedings, civil or criminal, formal, or informal, where the answers might incriminate him in future criminal proceedings. Also, The Montana State Constitution under Article II Section 25. Orr will again Invoke his Fifth Amendment Rights guaranteed by The Constitution of the United States of America. No person shall be deprived of life, liberty, or property, without due process of law. This is also under Article II Section 17 in The Montana State Constitution. Rather than go on with more, it must be recognized this case has absolutely no merit. Even if Coggeshall would have died, she had no right.

In the event that Coggeshall would have died, the interest of the property would have been passed on to his heirs. Even if she qualified as an heir she would still only have half an interest in the property. There is absolutely no way possible that House could claim ownership to the whole piece of property.

It has long been recognized that a cotenant in joint tenancy has a right and ability to sell their interest. *See* 20 Am.Jur.2d *Cotenancy and Joint Tenants*, § 16 at 109, which states: "Any act of a joint tenant which destroys one or more of its necessarily coexisting unities operates as a severance of the joint tenancy and extinguishes the right of survivorship. The act of one joint tenant in severing his interest in the property by alienation severs the joint tenancy to the extent, so that if there were but two tenants, the joint tenancy is terminated." This is the law in Montana. *See State Board of Equalization v. Cole* (1948), 122 Mont. 9, 195 P.2d 989


There is also another well known factor. The statute of limitations. Orr has found many different options 27-2-202, 70-19-302(1)(2) 70-19-304, 70-19-403. They range from 2, 5, 8, and 10 years. Orr will let the court decide. House claims she tried to sell the property to Duane Rhodes in August, 2020. Duane is my neighbor and works for the Lincoln County Sheriff's Department. We only see each other in passing while driving down the road. We have never discussed this issue. House had no right to attempt such a transaction. The Arizona Judge authorized her to transfer the property into her own name, December 8, 2020. (Cmpt. pg. 3 prg.17). Even though he had no right to authorize it, this would be the official date that House commenced her erroneous attempt for a monetary gain. The Quit Claim Deed with right of survivorship, between Coggeshall and Orr is the Deed the Arizona Judge authorized for her to claim, (Exhibit A). Orr conveyed that Quit Claim Deed with Coggeshall on July 1, 2009, Eleven years earlier. The longest Statute of Limitations Orr could find pertaining to property was Ten Years.

CONCLUSION

This is indeed an extraordinary circumstance. Orr couldn't find any case laws that coincided with his scenario. The reasoning is likely due to the fact that an atrocity such as this has never transpired before. One can only hope it never happens again, to anyone. Orr comes from a very large family, now measuring six generations of Libby, Montanans. Orr's family and many friends are stunned, to know that he, or anyone could lose their property so easily. Especially, without having stepped one foot into a Courtroom. The genuine issues of material facts were supposedly no where to be found by House's council, Mr. Christian. This was the abstract evidence used to steal a Man's land from him that he had for twenty years. That does not set very well with many Native Montanans whom are watching how this unfolds. Our Founding Fathers very wisely designed and crafted the Constitution with checks and balances to prevent this kind of Judicial abuse and protect the people. A Quit Claim Deed that clearly states, as Joint Tenancy with the right of survivorship carries that same protection. It is a very unique type of agreement all in its own little realm that can be broken only by its assignees. Orr realizes the letters are very small, but he would be most gracious in providing Mr. Christian with a magnifying glass so as to read the last of the third sentence. It unequivocally says, of said joint tenants **forever**. Once the two tenants sever it under mutual agreement by signing it in front of a Notary Public, it passes back to the person so designated and they have full Ownership. That is the purpose of Deeds signed at the same time together in front of a Notary Public and bearing her stamp. They exist for the reason to make papers legal and binding. However, Mr. Christian seems to have adopted his own laws to fit his own agenda however he chooses to apply them. This type of abuse of the judicial system is exactly what our Founding Fathers warned us about. This, whatever one might call it, has certainly not been a proceeding referred to as a fair trial written in the Constitution of The United States of America, nor The Constitution of the State of Montana. It is a blatant violation of Mr Orrs rights. It tends to make one wonder if we even have these Great Documents anymore. They are there to protect the peoples rights. Orr's property Deed could not be any clearer.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points and does not exceed 10,000 words.



[Signature]

