IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 23-0699

DAVID E. ORR,
Appellant,

vs.

TIFFANY HOUSE,
Appellee.

APPELLEE'S ANSWER BRIEF

On Appeal from the District Court of the Nineteenth Judicial District
of the State of Montana, In and For the County of Lincoln,
Before the Honorable Matthew J. Cuffe

Appearances:

W. Bridger Christian, LL.M.
CHRISTIAN, SAMSON & BASKETT, PLLC
310 West Spruce St.
Missoula, Montana 59802
Tel: (406) 721-7772
Email: bridger@CSBlawoffice.com
Attorneys for Appellee

David E. Orr
957 Warland Creek Rd.
Libby, Montana 59923
Tel: (406) 293-3591
Email: davey057@gmail.com
Appellant Pro Se

Table of Contents

Table of Authorities

Cases

Statutes

Other Authorities

COMES NOW Appellee Tiffany House, by and through her undersigned counsel, and hereby submits Appellee's Answer Brief in response to Appellant David E. Orr's Brief filed January 29, 2024.

I. STATEMENT OF THE ISSUES

Appellee disagrees with Appellant's characterization of the statement of the issues presented in the initial brief. *See* Montana Rules of Appellate Procedure Rule 12(1)(b). Appellant has mischaracterized the issues ripe for appeal. The issue presented by the Appellee is whether the Appellant is permitted to introduce issues on appeal that were not previously presented to the District Court, thereby denying the District Court the opportunity to consider these issues in the first instance.

II. STATEMENT OF THE CASE

This action arises from an Arizona judgment ordering that Tiffany House ("Appellee") is entitled to sell property acquired by her former husband, Conrad Coggeshall ("Coggeshall,") during their marriage. The Arizona court ordered certain Montana property to be sold, and authorized Appellee to take any action necessary to complete the sale. Judgment at pg. 3, *In re the Matter of Conrad Coggeshall and Tiffany Coggeshall*, Sup. Ct. of Ari., Maricopa Cty., Case FC 2012-051948 (July 21, 2020), attached hereto as "Exhibit 1".

To enforce such judgement, on February 14, 2022, Appellee filed a Verified Complaint in Montana's Nineteenth Judicial District, asserting a quiet title and fraudulent transfer action regarding property in Lincoln County, Montana, which

matter is the underlying action in this appeal. Doc. 1, ¶¶ 20–28. The Defendants named in the Complaint are Conrad Coggeshall, David E. Orr ("Appellant,") and "all other persons, unknown, claiming, or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to [Appellee]'s ownership or any cloud upon [Appellee]'s title, whether the claim or possible is present or contingent" ("the Unknown Defendants.") *Id.* The Appellee, noting the Appellant's objection, filed a motion for summary judgment (Doc. 11), citing the Appellant's lack of a timely response to the Appellee's Discovery Requests (including Requests for Admission), which motion was subsequently granted by the District Court. *See* Doc. 15. The District Court directed that Appellant execute a quitclaim deed to convey Appellant's interest in the Property to Appellee by August 18, 2023. *Id.* The Appellee subsequently requested that the Clerk enter default against Coggeshall and the Unknown Defendants for failure to appear or otherwise defend the action. *See* Doc. 22. The Clerk entered default against Coggeshall and the Unknown Defendants on August 23, 2023. *See* Doc. 23.

In the interim, the District Court issued Findings of Fact and Conclusions of Law noting Appellant's failure to transfer the property by the court-imposed deadline of August 18, 2023. *See* Doc. 28. As such, the District Court issued an Order Transferring Property to Appellee and directing the Clerk and Recorder of Lincoln

County to record the Order Transferring Property which "shall be treated with the same legal effect as a duly executed and recorded deed." *See* Doc. 29. Appellant then filed the present appeal. *See* Doc. 31. Shortly after filing the Notice of Appeal, Appellant filed an Affidavit stating that his constitutional rights had been violated. *See* Doc. 35. The Montana State Attorney General's Office declined to intervene in the present case. *See* Notice Declining Intervention (January 8, 2024).

III. STATEMENT OF THE FACTS

In 2009, Appellant transferred the subject real property from Warland Ridge Ventures, LLC, of which Appellant is the authorized representative and on information and belief the sole member, to Coggeshall. *See* Exhibit A to Appellant's Opening Brief. Coggeshall acquired the property during his marriage to Appellee. *See* Ex. 1, pg. 2. The deed itself is a form quitclaim deed titled "Quitclaim Deed - Joint Tenancy." *See* Appellant's Ex. A. However, Coggeshall is the only Grantee, and Warland Ridge Ventures, LLC is the only Grantor. *Id.* As such, title to the property was vested completely in Coggeshall upon the recordation of the deed. *Id.*

On December 8, 2020, at the Appellee's request, the Arizona Court authorized the Appellee to transfer title to the property into her own name, a copy of which is attached hereto as "Exhibit 2". Rather than adhere to the Arizona Court's order, Coggeshall executed a quitclaim deed and transferred the property to Appellant on

July 1, 2021, a copy of which is attached hereto as "Exhibit 3". As such, Appellee initiated the underlying action to quiet title to the subject property in her name.

IV. STANDARD OF REVIEW

An issue is not reviewed by the Montana Supreme Court if raised for the first time on appeal unless the error is plain and the Court is firmly convinced that the proceeding would result in "manifest miscarriage of justice or compromise the integrity of the judicial process." *In re H.T.*, 2015 MT 41, ¶ 14, 378 Mont. 206, 343 P.3d 159 (citations omitted).

V. SUMMARY OF THE ARGUMENT

The Appellant has advanced new arguments for the first time on appeal which should be disregarded by this Court because they do not constitute plain error, and thus do not warrant review for the first time on appeal. The District Court's ultimate conclusion that Appellant is required to transfer the property to Appellee does not result in a manifest miscarriage of justice or compromise the integrity of the judicial process.

VI. ARGUMENT

A. Appellant Asserts Arguments on Appeal for the First Time Which is Procedurally Improper, and it is Not Plain Error for This Court to Refuse to Address These Arguments.

It is well-settled in Montana that an argument cannot be addressed for the first time on appeal. *See Bekkedahl v. McKittrick*, 2002 MT 250, ¶ 31, 312 Mont. 156, 58

P.3d 175; *Unified Industries, Inc. v. Easley*, 1998 MT 145, ¶ 15, 289 Mont. 255, 961 P.2d 100; *Day v. Payne*, 280 Mont. 273, 276, 929 P.2d 864, 866. "The general rule in Montana is that [this Court] will not address either an issue raised for the first time on appeal or a party's change in legal theory." *Bekkedahl*, ¶ 31 (citations omitted). This rule is founded on the principle that it is fundamentally unfair to "fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider." *Id.* While *pro se* litigants are granted a certain margin to adhere to the "technicalities of pleadings," it has been "repeatedly stated that all litigants, including those acting *pro se*, must adhere to [the] procedural rules." *Xin Xu v. McLaughlin Research Inst. For Biomedical Sci., Inc.*, 2005 MT 209, ¶ 23, 328 Mont. 232, 119 P.3d 100.

Only in the most egregious circumstances is an issue heard for the first time on appeal. This Court applies the plain error doctrine and will hear an argument for the first time on appeal "where the error is 'plain' and we are 'firmly convinced' that an aspect of the proceeding would result in 'manifest miscarriage of justice or compromise the integrity of the judicial process.'" *In re H.T.* ¶ 14 (citations omitted). The plain error doctrine is invoked sparingly. *Id.*

It is important to keep in mind the procedural posture of this case at the District Court level. The Appellee submitted discovery requests, including requests for admission, to the Appellant, who failed to respond in a timely manner. *See* Mont.

R. Civ. P. 34. Consequently, the Requests for Admission contained in the Appellees' discovery requests were considered admitted. Mont. R. Civ. P. 36(a)(3). Based on these deemed admissions, the Appellee moved for summary judgment, noting the Appellant's objection. Doc. 11. The Appellant did not provide a substantive response to the Motion for Summary Judgment within the 21-day period specified by the Mont. R. Civ. P. 56(c)(1)(B). Subsequently, the lower court granted the Motion for Summary Judgment, 59 days after it was served on Appellant. Doc. 15. The Appellant did not comply with the Order, leading the court to issue an Order Transferring Real Property. Doc. 29. Thereafter, the Appellant filed the present appeal. Doc. 31.

Therefore, the only question genuinely ripe for appeal is whether a district court may rely on deemed admissions to grant summary judgment in the absence of a response to the motion for summary judgment. Nevertheless, the Appellant introduces several novel arguments at the appellate level that were not presented to the lower court. Specifically, the Appellant's revised arguments are apparently as follows: (1) that the Appellant did indeed respond to the motion for summary judgment *via* email; (2) the invocation of Fifth Amendment rights as a justification for not responding to the discovery requests; (3) the entitlement of the Appellant to a jury trial; (4) the appropriateness of the District Court's decision to deny the Motion to Stay; (5) the possibility that sole ownership of property may be recognized

as joint tenancy if stated in the deed; and (6) that a Montana court should not rely upon a ruling from an Arizona court.

None of the above arguments or issues have been heard by the District Court and it would be unfair to fault the District Court "for failing to rule correctly on an issue it was never given the opportunity to consider." *See Bekkedahl*, ¶ 31 (citations omitted).

It is abundantly clear based on the procedural history of this case that Appellant has failed to permit the District Court to completely adjudicate these newly raised issues. Appellant's status as a *pro se* litigant does not excuse his adherence to procedural rules. Montana precedent does not compel this Court to review Appellant's new legal theories.

B. Appellant's Arguments are Substantively Deficient and thus the Plain Error Doctrine is Inapplicable.

Should this Court choose to consider the substance of the Appellant's arguments, it remains that the Appellee is entitled to prevail on the merits due to the comprehensive evidence and legal precedent that firmly supports the Appellee's position.

1. An Email Noting an Objection to a Motion is not a Substantive Response to a Motion.

The Appellant contends that he responded to the Motion for Summary Judgment (Doc. 11) *via* email. First, it should be noted that the Appellant's emailed

objection was noted, as required by Uniform District Court Rule 2(a). However, the email communication does not fulfill the procedural requirements for a substantive response to a Motion for Summary Judgment.

Mont. R. Civ. P. 56(e)(2) provides, "[w]hen a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must -- by affidavits or as otherwise provided in this rule -- set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party." An email, regardless of its intent, cannot substitute for the detailed argumentation, evidence presentation, and legal citation necessary in a formal response, as required by rule. As such, the Appellant's email, which merely expressed an objection, did not meet these criteria.

2. Persuasive Authority Exists that Would Create an Adverse Inference if Appellant Pleaded the Fifth Amendment in a Civil Matter.

Appellant has attempted to re-characterize his failure to respond to Appellee's discovery requests as being excused by the invocation of his Fifth Amendment right (and analogous Montana Constitutional right) to be free from self-incrimination. But, in a civil matter, the assertion of the Fifth Amendment privilege results in an adverse inference to the claimant. "It is general and long-standing principle that 'silence is often evidence of the most persuasive character' when 'it would have been natural under the circumstances to object to the assertion in question. *Mont. Bd. of*

Pharm. v. Kennedy, 2010 MT 227, ¶ 21, 358 Mont. 57, 243 P.3d 415' *citing United States v. Hale*, 422 U.S. 171, 176 (1975) (internal citations omitted). *Baxter v. Palmigiano,* 425 U.S. 308 (1976), established a principle that "the Fifth Amendment does not forbid adverse inferences against parties to civil actions" who assert the privilege. *Mont. Bd. of Pharm.*, ¶ 21 *quoting Baxter*. Although apparently not expressly incorporated into Montana law, the Montana Supreme Court has nevertheless noted the doctrine's "widely-accepted application." *Mont. Bd. of Pharm.*, ¶ 23.

After failing to respond to Appellee's initial requests for admission, the District Court granted summary judgment to Appellee. Appellant is attempting to retroactively invoke the Fifth Amendment privilege to justify to his failure to provide any response to Appellee's discovery requests.

Nevertheless, it should be noted that the Appellant had the option to formally respond to the discovery requests by invoking the Fifth Amendment privilege against self-incrimination, coupled with a denial of the allegations, thereby enabling the District Court to issue a ruling on this matter. However, the Appellant opted not to pursue this course of action, instead reserving the argument for the current appeal, thus raising the issue for the first time at this stage. This situation, coupled with the established principle that invoking the Fifth Amendment in civil proceedings often results in an adverse inference similar to the effects of failing to respond —

specifically, that the allegations are deemed admitted — further diminishes the merit of the claim and highlights that there was no "plain error" by the District Court.

3. The Appellant's Right to a Trial by Jury was not Violated.

Summary judgment is appropriate on all or part of a claim "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Mont. R. Civ. P. 56(c)(3). The initial burden is on the moving party to establish no genuine issue of material fact exists. *Estate of Willson v. Addison*, 2011 MT 179, ¶ 13, 361 Mont. 269, 258 P.3d 410 (citations omitted). The burden then shifts to the non-moving party who must display facts supporting a genuine issue for trial. *Id*. (citations omitted). Evidence sufficient to raise a genuine issue of material fact "must be in proper form and conclusions of law will not suffice; the proffered evidence must be material and of a substantial nature, not fanciful, frivolous, gauzy or merely suspicious." *Elk v. Healthy Mothers, Healthy Babies, Inc.*, 2003 MT 167, ¶ 16, 316 Mont. 320, 73 P.3d 795 (citations omitted).

In the present case, summary judgment was warranted because there was no genuine issue of material fact. This conclusion was based upon the unopposed requests for admission, which were thus deemed admitted (*see* Mont. R. Civ. P. 36(a)(3)), and the absence of a response to the Motion for Summary Judgment. These factors alone confirm that no material facts are at dispute, justifying judgment as a

matter of law in favor of the movant, and confirming that the Appellant's right to a jury trial was not violated.

4. The District Court's Denial of the Appellant's Motion to Stay was not in Error.

The denial of Appellant's motion to stay the judgment pending appeal was correctly decided for several reasons. Firstly, Appellant did not fulfill his obligation under Mont. R. App. P. 22 to seek the Court's approval of a supersedeas bond, a crucial step when requesting a stay. Doc. 28. Additionally, Appellant failed to provide either a certification of a waiver from the Appellee regarding such bond or to meet the requirement of supplying sureties, as mandated by Mont. R. App. P. 22 and 24. The requirement to secure a supersedeas bond goes beyond mere procedure; it plays a substantive role in safeguarding the interests of the prevailing party while an appeal is pending. Consequently, the District Court's decision to deny the motion to stay was not in error, and aligned with the procedural and substantive safeguards intended by the applicable rules.

5. Property Owners Are Not Considered Joint Tenants if Only One Grantee Exists on the Deed.

Appellant's next argument, raised for the first time in this appeal, asserts that a deed with one grantee may result in joint tenancy ownership if joint tenancy is stated on the deed. Primarily, Appellant argues that Appellee "had no right … whatsoever" to ownership of the property, because the property was initially held as

joint tenants between Appellant and Coggeshall. In addition to being raised belatedly for the first time on appeal, this argument is flawed on the merits because Coggeshall was the sole owner of the property when it was transferred to Appellant in 2021, and the joint tenancy label on the 2009 deed itself does not create such form of ownership.

First, Montana law provides that a "joint interest is one owned *by several persons* in equal shares by a title created by a single will or transfer, when expressly declared in … transfer to be a joint tenancy[.]" Montana Code Annotated § 70-1-307 (emphasis added). The ownership of property by a single person is characterized as sole or several ownership. Mont. Code Ann. § 70-1-305. It is clear that joint tenancy ownership requires two owners; property cannot be held jointly between one individual.

A review of the 2009 deed shows that Coggeshall was the sole grantee. *See* Ex. 1. A joint tenancy requires more than one person to hold title to the subject property. Appellant's argument that Appellee had "no right to [the property] whatsoever" based on the deed's incorrect labeling of the ownership status is incorrect and unpersuasive.

Moreover, even, *arguendo*, if the property was jointly owned between 2009 and 2021, it is undisputed that in 2021 Coggeshall transferred his entire interest in the property to Appellant. There is no argument that Appellant was not a proper

party, as he clearly owned the property in 2021, and Appellee had an equitable right to claim an interest in the property based on the Arizona Court's order.

In this light, Appellant provides several details concerning his dealings with Coggeshall. To the extent that Appellant has issues regarding the nature or terms of this deal, these concerns ought to be directed in a claim against Coggeshall and do not preclude Appellee from asserting a right to obtain the property. This distinction is crucial for understanding the boundaries of the present dispute and ensuring that claims are appropriately directed to resolve any underlying grievances with the original transaction.

As such, Appellant is incorrect regarding his assertions regarding the ownership of the property, and no plain error arises if the Court refuses to hear this argument for the first time on appeal.

6. It Is Common Practice for Montana Courts to Recognize Judgments from Other Jurisdictions.

A judicial record is given the same effect in Montana as is given effect in the state in which it was made, except it may only be enforced in this state by an action or special proceeding. Mont. Code Ann. § 26-3-203. Moreover, the United States Constitution requires that "Full Faith and Credit shall be given in each State to the …. judicial Proceedings of every other State." United States Constitution Article IV, § 1. The force and effect of other state's decrees must be given effect and enforced unless violative of Montana public policy or injurious to Montana's interests.

Gammon v. Gammon, 210 Mont. 463, 473, 684 P.2d 1081, 1086 (1984) quoting *In Re Anderson's Estate*, 121 Mont. 515, 524–25, 194 P.2d 621, 625–26. *Gammon* is factually similar to the scenario here, as a husband in a divorce proceeding conveyed title to a third party by quitclaim deed following an Oregon court's decree that all Montana property was to be awarded to the wife. *Id.* at 465–66. The wife then brought a quiet title action seeking to enforce the Oregon decree pursuant to § 26-3-203, Mont. Code Ann. *Id.* at 466–67. The third-party transferee argued that the Oregon court could not divest the husband of his title to the Montana property. *Id.* at 469.

The Montana Supreme Court ultimately held that a court in another jurisdiction may determine equitable rights between parties, but that court's decree is not considered a transfer of the property itself. "Insofar as the Oregon court attempted to *directly* transfer husband's Montana real property to wife, its act was not effective in this state." *Gammon* (emphasis added). However, the Oregon court "having jurisdiction of the parties and the subject matter, was empowered to determine the equities between the parties with respect to marital property" and based on the evidence provided, "equitably divided all real and personal property and awarded specific assets to the respective parties." *Id.* at 471–72, 684 P.2d at 1085. The Oregon court's decree was "valid and entitled to full faith and credit" in Montana courts. *Id.*

Following *Gammon*, Appellee has followed the proper procedure to enforce the Arizona court's judgment that awarded her the Montana property. *Gammon* makes it clear that a foreign court's decree does not transfer title itself, and a separate action is necessary to effectuate enforcement of the decree. In compliance with Mont. Code Ann. § 26-3-203, Appellee has properly brought an action to enforce the Arizona judgment. The Arizona court properly decided the equitable rights between Appellee and Coggeshall, and the District Court is able to enforce the judgment. Thus, Appellant's argument is without merit and no plain error results by this Court's refusal to hear this newly raised issue.

VII. CONCLUSION

The Appellant seeks a reconsideration of the case, yet he has foregone every opportunity to substantively engage with the process at the District Court level. This Court is not the appropriate venue to introduce issues for the first time. And, even if the issues raised by Appellant were ripe for appeal, they are entirely without merit. As such, this Court should affirm the ruling of the lower court and dismiss the present appeal.

DATED this 29th day of March, 2024.

CHRISTIAN, SAMSON & BASKETT, PLLC

/s/ *W. Bridger Christian*
W. Bridger Christian, LL.M.
Attorney for Appellee

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I certify that this Answer Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word, is not more than 10,000 words (word count: 3,633), excluding certificate of service and certificate of compliance.

DATED this 29th day of March, 2024.

CHRISTIAN, SAMSON & BASKETT, PLLC

/s/ *W. Bridger Christian*
W. Bridger Christian, LL.M.
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that I have served true and accurate copies of the foregoing document on the following party as follows:

VIA U.S. MAIL:

David E. Orr
957 Warland Creek Rd.
Libby, Montana 59923

DATED this 29th day of March, 2024.

CHRISTIAN, SAMSON & BASKETT, PLLC

/s/ *W. Bridger Christian*
W. Bridger Christian, LL.M.
Attorney for Appellee