DA 24-0118

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 224

IN THE MATTER OF THE ESTATE OF:
LENA AMELIA JOHNSON,

Deceased.

APPEAL FROM: District Court of the Second Judicial District,
In and For the County of Butte-Silver Bow, Cause No. DP-21-76
Honorable Kurt Krueger, Presiding Judge

COUNSEL OF RECORD:

For Appellants Estate of Katherine Grundhauser and Steven Grundhauser:

Natalie Black, Erika Colstad, Worden Thane P.C., Missoula, Montana

For Appellees Estate of Lena Johnson, and Kenneth Johnson:

W. Wayne Harper, Harper Law, Butte, Montana

Submitted on Briefs: August 21, 2024

Decided: October 8, 2024

Filed:

Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 The Estate of Katherine Grundhauser (Katherine's Estate) appeals an order of the Second Judicial District Court, Butte-Silver Bow County, denying its motion to intervene and motion for relief from judgment. We reverse and remand for further proceedings.

¶2 We restate the following issues on appeal:

1. *Whether the District Court abused its discretion by denying Katherine's Estate's motion to intervene.*

2. *Whether the District Court abused its discretion by denying relief from judgment and ordering Katherine's Estate bound to the settlement agreement.*

3. *Whether the District Court erred by finding that the doctrine of laches barred Katherine's Estate's motions.*

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Lena Johnson and her daughter, Katherine Grundhauser, died in an auto accident in 2006. The property at the heart of this dispute (Property) is a home located in Butte, Montana, that Lena and Katherine co-owned as joint tenants with the right of survivorship.

¶4 An informal probate of the Estate of Lena Johnson (Lena's Estate) was opened in August 2006, and Lena's other child, Kenneth Johnson (Johnson), was appointed personal representative. Assets from Lena's Estate were distributed to Johnson's children and to three of Katherine's children, Cindy, Brooke, and Melissa. The remainder was distributed between Johnson and Katherine's husband, Steven Grundhauser (Grundhauser). No agreement was reached regarding the Property and the legal matter was closed in December 2011. Johnson's children lived in the Property rent-free.

¶5 In 2020, members of the family found Lena's Will (Will), revitalizing the dispute about the value and ownership of the Property. The Will ordered all property be divided equally between Katherine and Johnson or held in trust for their children if they predeceased Lena. This meant that Johnson's children, who had received significant estate assets and benefitted from the Property, were not beneficiaries of Lena's Estate. The Will also included a clause dictating that the joint ownership of the Property was "for the purpose of convenience only" and that it should be disregarded. The relevant provision states in full:

> In addition to the other property, which is part of my estate, I have created joint ownership of my home in my name, and the name of my daughter, Katherine Grundhauser; this joint ownership was created for the purpose of convenience only and it is my desire and I will and direct that the joint tenancy of my home be disregarded and that my estate be distributed equally to my said children in accordance with the residuary clause of this Will.

¶6 In October 2020, Cindy, Brooke, Melissa, and Grundhauser, referred to collectively as "Petitioners" in relevant documents, petitioned the District Court for informal probate of Lena's Estate and appointment of Grundhauser as personal representative. The District Court denied the motion. Formal probate of Lena's Estate was opened in June 2021, with Johnson as personal representative.

¶7 A number of issues followed regarding valuation of the Property, Johnson's administration of the Property, the collection and distribution of rental income, and a motion for sale of the Property. There is a substantial question as to the scope of Grundhauser's legal representation throughout this time. Petitioners' attorney claimed that Grundhauser was only involved for the limited purpose of the earlier petition to replace

Johnson as personal representative. But the subsequent filings all list Grundhauser among the Petitioners, and the attorney did not move to withdraw as Grundhauser's counsel until November 2023.[1] In August 2022, a mediation was held to settle the Property. Both the Petitioners and Lena's Estate were represented at the mediation and had apparent authority for their clients, ostensibly including Grundhauser as Petitioner. Apparently believing that the Will clause controlled over the grant deed and that all necessary parties were represented, the parties reached a settlement agreement (Agreement) under which Lena's Estate would essentially buy out Cindy's, Brooke's, and Melissa's interests in the Property.

¶8 Sometime after the mediation, Petitioners became aware that Grundhauser would need to execute title documents on behalf of Katherine's Estate to release its interest in the Property. According to Petitioners' attorney, that was the first time anyone became aware that Katherine's Estate—and therefore Grundhauser as presumptive personal representative and beneficiary—had any personal interest in the Property, which meant that both attorneys had reached the Agreement under a mistake of law. After a November correspondence where Petitioners' attorney proposed a new (and subsequently rejected) sum accounting for Grundhauser's interest via Katherine's Estate, Grundhauser sought

[1] In the September hearing, Petitioners' counsel referred to an earlier motion to withdraw that does not appear in the record before this Court. Petitioners' counsel averred that it was filed "a while back" in response to a discussion with the judge in chambers. The District Court reminded Petitioners' counsel that it had not ruled on that motion and in fact could not locate it in the Register of Actions. Grundhauser was not formally represented by other counsel until September 19, 2023, and the Petitioners' attorney did not formally move to withdraw as his counsel until November 28, 2023.

independent counsel. In May 2023, the attorney for Lena's Estate moved for a status hearing regarding the Agreement and Grundhauser's representation.

¶9 Meanwhile, probate for Katherine's Estate was opened and a notice of appearance was entered on September 19. On September 27, a hearing was held to determine the enforceability of the Agreement. Petitioners' attorney maintained that there had been a mutual mistake of law because both attorneys thought that the Will clause controlled. The attorney for Lena's Estate apparently changed his position from earlier communication and asserted that the parties knew the grant deed controlled. The District Court stated it was not making a determination as to Katherine's Estate but ordered the parties to determine how to enforce and execute the Agreement.

¶10 In November 2023, the District Court issued its Findings of Fact, Conclusions of Law, and Order (November 9th Order). It concluded that Grundhauser, as one of the four Petitioners, was bound to the Agreement and that "via his standing as a Petitioner and his position as stated in numerous pleadings, [Grundhauser] entered into the settlement agreement fully aware that he was transferring all interest in [the Property]." The District Court ordered all Petitioners to release Johnson according to the Agreement and "execute all documents necessary to transfer the [P]roperty . . . to [Johnson] and/or his assigns."

¶11 Katherine's Estate subsequently filed a motion for relief from judgment, a motion to amend judgment, and a separate emergency motion to intervene. The District Court denied the motions, additionally finding that they were separately barred by laches. Katherine's Estate appeals from this order.

STANDARD OF REVIEW

¶12 We review a district court's decision on a motion to intervene for abuse of discretion. *In re Estate of Burns*, 2023 MT 253, ¶ 9, 414 Mont. 365, 540 P.3d 1029. A court abuses its discretion when it acts arbitrarily without employment of conscientious judgment or exceeds the bounds of reason resulting in substantial injustice. *In re Estate of Burns*, ¶ 9 (citing *Shilhanek v. D-2 Trucking, Inc.*, 2000 MT 16, ¶ 24, 298 Mont. 101, 994 P.2d 1105).

¶13 We review a district court's ruling on a motion for relief from judgment depending on "the nature of the final judgment, order, or proceeding from which relief is sought and the specific basis of the Rule 60(b) motion." *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451. Generally, the district court's ruling is reviewed for abuse of discretion. *Essex Ins. Co.*, ¶ 16. Conclusions of law, such as whether a judgment is void, are reviewed de novo. *Essex Ins. Co.*, ¶ 16.

¶14 Laches is an equitable doctrine that may apply when a person is negligent in asserting a right. *Wicklund v. Sundheim*, 2016 MT 62, ¶ 9, 383 Mont. 1, 367 P.3d 403. In reviewing a district court's exercise of its equitable power, we review questions of fact for clear error and interpretations of law for correctness. *Wicklund*, ¶ 9 (citing *LeMond v. Yellowstone Dev., LLC*, 2014 MT 181A, 375 Mont. 402, 336 P.3d 345).

DISCUSSION

¶15 Katherine's Estate argues that the District Court abused its discretion in denying its motion to intervene and motion for relief and erred in applying the doctrine of laches. We address each issue in turn.

¶16 *1. Whether the District Court abused its discretion by denying Katherine's Estate's motion to intervene.*

¶17 M. R. Civ. P. 24 governs when the court must permit intervention.[2] It provides that anyone who "claims an interest relating to the property or transaction which is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest" may intervene as of right, unless that interest is adequately represented by existing parties. M. R. Civ. P. 24(a)(2). This rule exists to protect nonparties from having their interests adversely affected by litigation conducted without their participation. *Clark Fork Coal. v. Mont. Dep't of Env't Quality*, 2007 MT 176, ¶ 10, 338 Mont. 205, 164 P.3d 902.

¶18 To intervene as a matter of right, a movant must satisfy each of the following requirements: (1) be timely; (2) show an interest in the subject matter of the action; (3) show that the protection of the interest may be impaired by the disposition of the action; and (4) show that the interest is not adequately represented by an existing party. *Estate of Schwenke v. Becktold*, 252 Mont. 127, 131, 827 P.2d 808, 811 (1992) (citing *Keith v. Daley*, 764 F.2d 1265, 1268 (7th Cir. 1985)).

[2] We note that the Montana Rule is "essentially identical to the federal rule," Fed. R. Civ. P. 24, and "is interpreted liberally." *Sportsmen for I-143 v. Mont. Fifteenth Jud. Dist. Ct.*, 2002 MT 18, ¶ 7, 308 Mont. 189, 40 P.3d 400.

¶19 The District Court order focused on timeliness, finding that the time since Katherine's death along with Grundhauser's earlier involvement in the case gave him sufficient notice and precluded the notion that Katherine's Estate had not been adequately represented or would be prejudiced by enforcement of the Agreement. We disagree, concluding that as a matter of law, Katherine's Estate was not and could not have been represented by Grundhauser in the Agreement and should have been allowed to intervene as of right.

¶20 Whether a motion to intervene is timely depends on four factors, none of which is independently dispositive:

> (1) the length of time before the intervenor knew or should have known of its interest in the case before moving to intervene; (2) the prejudice to the original parties, if intervention is granted, resulting from the intervenor's delay in making its application to intervene; (3) the prejudice to the intervenor if the motion is denied; and (4) any unusual circumstances mitigating for or against a determination that the application is timely.

In re Adoption of C.C.L.B., 2001 MT 66, ¶ 24, 305 Mont. 22, 22 P.3d 646.

¶21 The District Court stated that if Grundhauser had obtained counsel or pursued his obligations as personal representative of Katherine's Estate earlier, "a routine cataloguing of assets would have revealed the deed." This may be true, but even if Katherine's Estate had been aware of the deed, the Agreement was still created under the mistaken belief that the Will controlled over the deed, meaning that Katherine's Estate had no interest. It was not until the title company was preparing closing documents in late 2022 that Katherine's Estate allegedly learned it had any interest. Katherine's Estate sought to resolve the issue

without formally joining as a party until late 2023, when it became evident that its legal interest would be destroyed without intervention. We conclude this length of time is reasonable.

¶22 Regarding prejudice to the original parties, the only relevant consideration is prejudice "which would result from the would-be intervenor's failure to request intervention as soon as he or she knew or reasonably should have known about his or her interest in the action." *In re C.C.L.B.*, ¶ 30. Here, that time is, at worst, 2022 through 2023. Communications in the record indicate that Lena's Estate had taken a loan to pay the Agreement and that the loan's interest rate would increase after November 2022, though Lena's Estate does not make any arguments to this Court regarding prejudice to its interests. Regardless, the prejudice to Katherine's Estate if they are not allowed to intervene is substantial. Katherine's Estate has a valid legal interest, discussed below, entitling it to due process of law. When the Agreement was negotiated without its involvement, it was deprived of the opportunity to protect that interest and sought to intervene to rectify that issue. To now hold Katherine's Estate unable to intervene would deprive it of its legal interest without due process.

¶23 Certainly, there are unusual mitigating circumstances present in this case weighing both directions. The District Court repeatedly referenced the 18 years since Katherine's and Lena's deaths. Indeed, this all might have been avoided—or at least dispensed with earlier—had either of the estates been handled differently, or if the parties had counsel who stopped to question whether a will controlled over a deed. Nonetheless, the severe

consequences of disposing of a non-party's valid legal interest without its involvement weigh strongly in favor of finding that the motion was timely.

¶24 Concluding that Katherine's Estate's motion was timely, we turn to the other requirements for intervention. Katherine's Estate easily meets the second element of showing an interest in the subject matter of the action, as Katherine's Estate was vested with a 50% interest in the Property immediately upon the simultaneous deaths of Katherine and Lena. *See* § 72-2-712(3)(a)(i), MCA (establishing that when a co-owner with rights of survivorship does not survive the other by 120 hours, "one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours"). No party disputes the existence of this interest. It follows, then, that Katherine's Estate's interest would be severely impaired by the instant disposition of the Property. If it is not allowed to intervene, and the Agreement is enforced, Katherine's Estate's valid legal interest would be obliterated.

¶25 Finally, Katherine's Estate is not adequately represented by an existing party. Though Grundhauser was a party to the Agreement stemming from the prior failed attempt to become personal representative of Lena's Estate, his involvement in that limited capacity cannot impute his involvement on behalf of Katherine's Estate. At the time of the Agreement, Katherine's Estate was not an open probate, did not have an appointed personal representative, and was not represented by legal counsel. Under § 72-3-601(1), MCA, "[t]he duties and powers of a personal representative commence upon appointment." Thus, Grundhauser could not have legally represented the estate until after the Agreement.

Though the probate of Katherine's Estate theoretically could have been opened earlier, Grundhauser reasonably relied on Johnson's administration of Lena's Estate as well as two attorneys' communications and conduct indicating that Katherine's Estate had no interest in the Property. We hold that Katherine's Estate meets all four elements and that it should have been allowed to intervene as of right.

¶26 *2. Whether the District Court abused its discretion by denying relief from judgment and ordering Katherine's Estate bound to the settlement agreement.*

¶27 Katherine's Estate asserts that because the Agreement was based on a mutual mistake of law, the District Court is also necessarily mistaken. It argues further that because Katherine's Estate was not a party to the Agreement, the District Court's order demanding its compliance is otherwise void for lack of jurisdiction and lack of due process. We agree and hold that the District Court abused its discretion by denying relief from judgment.

¶28 M. R. Civ. P. 60 provides that a court may grant relief from a final order for "(1) mistake, inadvertence, surprise, or excusable neglect; . . . (4) the judgment is void; . . . or (6) any other reason that justifies relief." For purposes of Rule 60, a mistake is defined as "some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence." *In re Marriage of Schoenthal*, 2005 MT 24, ¶ 33, 326 Mont. 15, 106 P.3d 1162. It must be something "beyond mere carelessness or ignorance of the law on the part of the litigant or his attorney." *In re Marriage of Castor*, 249 Mont. 495, 499, 817 P.2d 665, 667 (1991).

¶29 Despite the evolving position of Lena's Estate, the record supports that the Agreement was made under a mutual mistake of law by both Petitioners' attorney and Lena's Estate's attorney. Both the substance of the Agreement and the communications in the proceeding months show that the attorneys believed that the Will clause controlled over the deed and that Katherine's Estate had no interest. Even if we accepted Lena's Estate's current position—that the parties knew Katherine's Estate might have some interest, but "negotiated and mediated knowing the outcome would be the same"—then it was a mistake that neither the negotiations nor the Agreement contemplated Katherine's Estate as a necessary party. The Agreement as it currently stands is fundamentally mistaken, and the District Court should have granted relief from judgment under Rule 60(b)(1) on this basis.

¶30 Additionally, the District Court should have granted relief from judgment under Rule 60(b)(4) because its order is void. A judgment is void if the court lacked jurisdiction over the parties or "acted in a manner inconsistent with due process of law." *In re Marriage of Wendt*, 2014 MT 174, ¶ 11, 375 Mont. 388, 329 P.3d 567 (citation omitted). "Montana courts do not have the authority to order a non-party to engage in conduct, nor can they enforce such an order." *In re Parenting of P.H.R.*, 2021 MT 231, ¶ 12, 405 Mont. 334, 495 P.3d 38.

¶31 Foundationally, the District Court conflates Grundhauser's involvement with Katherine's Estate's involvement. It is critical that they be recognized as separate entities. Grundhauser was involved as a Petitioner; Katherine's Estate was not. Katherine's Estate's only appearance before its motion to intervene was the September hearing, where it sought

to ensure that the Agreement would not be enforced without consideration of its interest. Nothing in the Agreement or in any pleading before the District Court named Katherine's Estate, and the District Court avoided addressing Katherine's Estate at all until the November 9th Order, where it ordered the release of interests and transfer of the Property according to the Agreement. Because the District Court did not have jurisdiction over Katherine's Estate, it could not order the transfer of the legal interest.

¶32 For the same reasons, ordering the transfer of the Property violated constitutional due process requirements, providing another ground for voidness. As discussed, the Agreement was reached without any involvement of Katherine's Estate, yet proposes the complete forfeiture of its legal interest. Katherine's Estate was deprived of "the fundamental requirement of due process"—"the opportunity to be heard at a meaningful time and in a meaningful manner." *Matthews v. Eldridge*, 424 U.S. 319, 333 96 S. Ct. 893, 902 (1976). In the September hearing, the District Court suggested that any claims by Katherine's Estate could be dealt with separately. But once it is deprived of its legal interest, it is too late. The November 9th Order is void, and Katherine's Estate should have been granted relief from the judgment.

¶33 *3. Whether the District Court erred by finding that the doctrine of laches barred Katherine's Estate's motions.*

¶34 The District Court held that Katherine's Estate's motions were independently barred by laches because "Grundhauser, and therefore the Estate, [had] reason to know of potential claims to the property back in 2006, when an ordinary person would have discovered such claims upon seeking advice of counsel." This improperly conflates Grundhauser's

previous involvement with the separate entity of Katherine's Estate and inaccurately places the blame for the delay solely on Grundhauser. We disagree that laches applies.

¶35 Laches is an equitable judicial remedy that can apply when a person is negligent in asserting a right. *Cole v. State ex rel. Brown*, 2002 MT 32, ¶ 24, 308 Mont. 265, 42 P.3d 760. "Laches exists 'where there has been an unexplainable delay of such duration or character as to render the enforcement of an asserted right inequitable, and is appropriate when a party is actually or presumptively aware of his rights but fails to act.'" *Cole*, ¶ 24 (quoting *Larson v. Undem*, 246 Mont. 336, 340, 805 P.2d 1318, 1321 (1990)). A party is considered presumptively aware of their rights when the known circumstances would put an ordinary person on inquiry. *Cole*, ¶ 24 (citations omitted). While elapsed time is an important consideration, the principal concern is the inequity of allowing a claim to be enforced. *Cole*, ¶ 25.

¶36 The District Court looked to the elapsed time since 2006, when Katherine's Estate *could* have been opened. But the fact remains that it was not opened until 2023, after the title company's request gave rise to Katherine's Estate's awareness of the property interest. The critical fact is that the parties to the Agreement—and the lawyers involved—worked under the impression that whatever property interest might have existed by deed was entirely superseded by the Will. Within a reasonable amount of time after learning that that was not the case, Grundhauser, as presumptive personal representative and beneficiary of Katherine's Estate, sought representation for the estate, opened probate, and brought the issue to the District Court's attention. We do not find this to be an unexplainable delay.

¶37 While it does prejudice the existing parties to further delay the sale of the Property, it pales in comparison to the prejudice done to Katherine's Estate if the Property is sold without its involvement. Equity is the primary consideration in laches and weighs heavily in favor of Katherine's Estate.

¶38 We note the District Court's frustration that "[t]his case involves a cavalcade of errors and family squabbles" and that Grundhauser "is now the sole individual positioned to benefit from [Katherine's] Estate's attempt to intervene." This dispute over the disposition of the Property, which was nearly resolved by the Agreement, holds Lena's and Katherine's estates open almost 20 years after their deaths. But to hold Katherine's Estate unable to intervene and bound by the Agreement would be to enforce a policy whereby parties can contract to sell property they do not own without involvement of the rightful owner.

CONCLUSION

¶39 We hold that the District Court abused its discretion by denying Katherine's Estate's motion to intervene and motion for relief from judgment. The District Court also erred in applying the doctrine of laches. We reverse and remand for further proceedings consistent with this Opinion.

/S/ LAURIE McKINNON

We Concur:

/S/ MIKE McGRATH
/S/ BETH BAKER
/S/ INGRID GUSTAFSON
/S/ JAMES JEREMIAH SHEA