

DA 14-0420

IN THE SUPREME COURT OF THE STATE OF MONTANA

2015 MT 62N

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IN THE MATTER OF THE ESTATE OF LOUIS G. HANNUM, SR.,

Deceased.

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APPEAL FROM: District Court of the Twentieth Judicial District,  
In and For the County of Sanders, Cause No. DP-10-23  
Honorable Deborah Kim Christopher, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Don C. St. Peter, St. Peter Law Offices, P.C.; Missoula, Montana

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For Appellees Esther M. Gallagher and James J. Gallagher II:

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For Appellee Michael J. Hannum:

Shane A. Vannatta, Reid J. Perkins, Worden Thane P.C.; Missoula,  
Montana

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Submitted on Briefs: December 31, 2014  
Decided: February 24, 2015

Filed:



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Clerk

Justice Michael E Wheat delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of nonciteable cases published in the Pacific Reporter and Montana Reports.

¶2 Mark Hannum appeals from the order of the Montana Twentieth Judicial District Court, Sanders County, denying his objection to informal probate of the will of Louis G. Hannum, Sr. (the Decedent). We affirm.

¶3 The Decedent died on August 12, 2010. Prior to his death, he executed at least two wills – one in 1995 and one in 2005. The 2005 will revoked all prior wills and codicils, disposed of his property, and appointed the Decedent's son, Louis G. Hannum, Jr. (Louis), as personal representative of the Decedent's estate.

¶4 On September 2, 2010, Louis submitted an application for informal probate of the 2005 will and appointment of Louis as personal representative. The Clerk of the District Court granted the application for informal probate. Notice was mailed to the devisees and descendants identified in the 2005 will, which included Mark Hannum, a son of the Decedent.

¶5 On February 8, 2013, after over two years of litigation and appeal concerning removal of Louis as personal representative and whether to pursue certain claims of the estate, Mark objected to the September 2, 2010 application for informal probate and demanded a jury trial. Mark contended that the 2005 will was invalid because the Decedent lacked testamentary capacity when the will was executed. As such, he argued that the 1995 will

should be probated. The objection was Mark's first official appearance in the probate proceedings. The District Court denied the objection on June 4, 2014. Mark appeals.

¶6 We review a District Court's decisions in equity for an abuse of discretion. *Ruegsegger v. Welborn*, 237 Mont. 317, 321, 773 P.2d 305, 308 (1989). We review a district court's findings of fact for clear error and its conclusions of law for correctness. *Montanans for Justice v. State ex rel. McGrath*, 2006 MT 277, ¶¶ 19-20, 334 Mont. 237, 146 P.3d 759.

¶7 The District Court denied Mark's objection on the equitable theory of laches. He argues that was error because there was no showing that he did not diligently pursue his rights or that the estate suffered any prejudice from the timing of his objection. He also argues that by statute he was entitled to formal probate proceedings and a hearing on his objection. Because he did not receive such a hearing, Mark contends that he did not receive due process.

¶8 The District Court did not abuse its discretion when it determined that Mark's objection was barred by laches. The District Court based its decision on its findings that Mark had not diligently pursued his rights and that the estate would be prejudiced if the objection was granted, given the timing of the objection. Such findings are enough to support laches. *See Cole v. State ex rel. Brown*, 2002 MT 32, ¶¶ 24-25, 308 Mont. 265, 42 P.3d 760; *see also Montanans for Justice*, ¶ 25 (stating that "[t]he purpose of laches is to discourage stale demands by the court refusing to interfere where there has been gross laches in prosecuting rights, or where long acquiescence in assertion of adverse rights has occurred"). Here, the findings were supported by substantial evidence in the record and they were not clearly erroneous.

¶9 Mark slept on his claim regarding the validity of the 2005 will. He did not contest the will for over two years following its admission to probate. While he remained silent, the estate and the other devisees went to considerable expense seeking Louis' removal as personal representative, performing an accounting of the estate, considering the Decedent's competence to enter transactions before his death, and otherwise administering the estate. All of these actions were conducted assuming that the 2005 will controlled the disposition of the estate. Thus, Mark only attempted to invalidate the 2005 will after "a protracted period of seeming assent" to the 2005 will. *Montanans for Justice*, ¶ 25.

¶10 Considering the foregoing, granting Mark's objection and rendering virtually meaningless most of the work and litigation that the parties have conducted over the past two years would be inequitable. Because substantial evidence supported its findings that Mark did not diligently pursue his rights and that the other parties to this action would be prejudiced if Mark is permitted to pursue them now, the District Court did not abuse its discretion by rejecting Mark's objection based on laches.

¶11 Nor are we persuaded that it violated Mark's right to due process by doing so. Mark contends that he was not afforded due process because the District Court did not conduct the formal probate hearing that he argues was required by statute following his objection. We have repeatedly recognized that while procedural due process requires notice and the *opportunity* for a hearing appropriate to the nature of the case, these requirements are "flexible" based on the procedural protections appropriate in each specific situation. *E.g.*, *Montanans for Justice*, ¶ 30. Here, Mark was given notice of the proceedings several times, and hearings were held, at which Mark could have but decided not to appear. Mark received

notice and a meaningful opportunity to be heard. Mark was given the opportunity to make his argument in his filings, and the record was sufficiently developed for the District Court to dispose of his objection. Due process did not require that a hearing be held on his objection. Mark received all of the process that he was due.

¶12 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for nonciteable memorandum opinions. There are issues in this case that are ones of judicial discretion and there clearly was not an abuse of discretion. The District Court's findings of fact are supported by substantial evidence and the legal issues are controlled by settled Montana law, which the District Court correctly interpreted. Affirmed.

/S/ MICHAEL E WHEAT

We Concur:

/S/ MIKE McGRATH  
/S/ PATRICIA COTTER  
/S/ JAMES JEREMIAH SHEA  
/S/ BETH BAKER