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CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 18-0555

DA 18-0555

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 145N

ESTATE OF ROBERT LESTER SEVERSON,

Plaintiff and Appellant,

v.

LYNN SEVERSON, SEVERSON FAMILY MINERAL TRUST,
STOCKMAN BANK OF PLENTYWOOD, INC.,
and DOES 1 through 10, Inclusive,

Defendants and Appellees.

APPEAL FROM: District Court of the Fifteenth Judicial District,
In and For the County of Sheridan, Cause No. DV 17-47
Honorable Katherine M. Bidegaray, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Phillip J. DeFelice, Attorney at Law, Saint Marie, Montana

For Appellees:

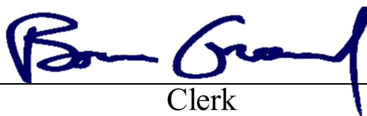
Laura Christoffersen, Christoffersen & Knierim, P.C., Culbertson, Montana (for Lynn Severson and Severson Family Mineral Trust)

William D. Lamdin, III., Dylan D. Crouse, Crowley Fleck, PLLP, Billings, Montana (for Stockman Bank)

Submitted on Briefs: May 15, 2019

Decided: June 25, 2019

Filed:



Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), 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 noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 The Estate of Robert Severson (Estate) appeals from two orders granting summary judgment to Defendants Lynn Severson (Lynn), the Severson Family Mineral Trust (Mineral Trust), and Stockman Bank of Plentywood, Inc. (Stockman), and from an order granting Rule 11 sanctions, entered by the Montana Fifteenth Judicial District Court, Sheridan County.

¶3 Lynn and the decedent of the Estate, Robert Severson (Robert), were brothers. They each provided aid and service to one another during periods of illness throughout their lives. They both owned mineral interests in lands in common pursuant to the creation of the Mineral Trust in 2011 wherein individuals conveyed certain mineral rights to the trust. In 2011 and 2012, the Mineral Trust leased its mineral acreage to oil companies and received income in the form of lease payments. These payments were shared between the beneficiaries of the trust based upon the beneficiary's ownership interest in the trust, after payment of expenses including accounting fees, attorney fees, and other expenses. Robert's share of the income from the Mineral Trust was deposited into accounts owned by him at Stockman in Malta, Montana. Sometime in 2012, Robert added Lynn as a joint

owner with rights of survivorship to his accounts at Stockman, which were governed by an account agreement between Lynn, Robert, and Stockman.

¶4 The Estate's claims arise out of certain transactions beginning in 2012. In fall 2012, Robert took out a loan with Stockman for $15,075 at 6% interest, for which Stockman received a promissory note with what was purported to be Robert's signature. Stockman deposited the loan proceeds into Lynn and Robert's joint account on September 17, 2012, which was reflected in an account statement dated October 5, 2012. The loan was repaid on December 19, 2012 from the same account, which was reflected in an account statement dated January 5, 2013. Stockman mailed all the bank account statements to Robert's Saco, Montana, address that he provided in the account agreement. Robert did not report to Stockman any unauthorized transactions associated with the account. Robert died on September 21, 2015.

¶5 On December 4, 2017, Robert's Estate initiated the current action, alleging breach of written agreement, breach of constructive trust, conversion, fraud, and breach of fiduciary duty against Lynn and the Mineral Trust, and a tort claim for breach of the covenant of good faith and fair dealing against Stockman. Lynn and the Mineral Trust moved for summary judgment and for imposition of Rule 11 sanctions and attorney fees, which were granted on June 12, 2018; June 14, 2018; and September 19, 2018; respectively. Stockman also moved for summary judgment, which was granted on June 20, 2018. The Estate appeals both summary judgment orders and the imposition of Rule 11 sanctions.

¶6 On appeal, the Estate argues there are material issues of fact that prohibited the entry of summary judgment, including: who signed the 2012 loan document with Stockman, whether Robert properly executed the account agreement with Stockman in favor of Lynn, whether Lynn's actions constituted a breach of trust, and when the statute of limitations commenced for the Estate's claims. The Estate argues its claims are not barred by the statute of limitations, and that the District Court erred by granting Rule 11 sanctions with attorney fees against the Estate.

¶7 In response, Lynn and the Mineral Trust argue sanctions are appropriate because allegations made by the Estate were meritless, and that the factual disputes asserted by the Estate are not relevant because the statute of limitations bars those claims in any event. Stockman argues the Estate's claim against it is barred under the account agreement between Robert, Lynn, and Stockman, and by the applicable statutes of limitation. Lynn, the Mineral Trust, and Stockman all contend that summary judgment, Rule 11 sanctions, and attorney fees against the Estate were proper.

Summary Judgment

¶8 "We review de novo a district court's grant or denial of summary judgment, applying the same criteria as the district courts." *Modroo v. Nationwide Mut. Fire Ins. Co.*, 2008 MT 275, ¶ 19, 345 Mont. 262, 191 P.3d 389 (citation omitted). "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file,' together with any affidavits demonstrate that no genuine issue exists as to any material fact and that the party moving for summary judgment is entitled to judgment as a matter of

law." *Modroo*, ¶ 19 (citing M. R. Civ. P. 56(c)). "We view the evidence in the light most favorable to the party opposing summary judgment, and we draw all reasonable inferences in favor of the party opposing summary judgment." *Modroo*, ¶ 19.

¶9 The party moving for summary judgment "has the burden of establishing a complete absence of any genuine factual issues. In light of the pleadings and the evidence before the court, there must be no material issue of fact remaining which would entitle a nonmoving party to recover. Once the moving party has met its burden, the opposing party must present material and substantial evidence, rather than mere conclusory or speculative statements, to raise a genuine issue of material fact. Disputed facts are material if they involve the elements of the cause of action or defense at issue to an extent that necessitates resolution of the issue by a trier of fact." *Motarie v. N. Mont. Joint Refuse Disposal Dist.*, 274 Mont. 239, 242, 907 P.2d 154, 156 (1995) (internal citations omitted). "[T]he court has 'no duty to anticipate or speculate' regarding contrary material facts." *Davis v. Westphal*, 2017 MT 276, ¶ 12, 389 Mont. 251, 405 P.3d 73 (quoting *Gamble Robinson Co. v. Carousel Props.*, 212 Mont. 305, 312, 688 P.2d 283, 287 (1984)). Thus, Lynn, the Mineral Trust, and Stockman, as the parties moving for summary judgment, had "the burden of establishing a complete absence of any genuine factual issues" which would prohibit the Estate from recovering. *Motarie*, 274 Mont. at 242, 907 P.2d at 156. The Estate, as the non-moving party, had to "present material and substantial evidence, rather than mere conclusory or speculative statements, to raise a genuine issue of material fact." *Motarie*, 274 Mont. at 242, 907 P.2d at 156.

¶10 The Estate first argues that whether Robert signed the loan document with Stockman, or whether it was signed by Lynn or another, is a disputed, material fact that prohibits summary judgment. However, as the District Court correctly concluded, Robert clearly ratified the loan regardless of whether he signed it, which then bound him to it. *See Erler v. Creative Fin. & Invs.*, 2009 MT 36, ¶ 25, 349 Mont. 207, 203 P.3d 744. Ratification requires three elements: (1) the principal accepts "the benefits of the agent's act," (2) "with full knowledge of the facts," and (3) there are "circumstances or an affirmative election indicating an intention to adopt the unauthorized arrangement." *Erler*, ¶ 27. Robert accepted the benefits of the loan when he received the loan proceeds in his Stockman account in September 2012. Robert had full knowledge of the loan because he received the loan statements from Stockman at his Saco address. Robert then repaid the loan at the same time and with the same check that he used to repay a different loan, and he did not challenge the enforceability of the loan before or after repaying it, demonstrating his affirmative acceptance of the loan. Because Robert ratified the loan, whether his signature was present is not material to the outcome of this case as the signature does not "involve the elements of the cause of action or defense at issue to an extent that necessitates resolution of the issue by a trier of fact." *Motarie*, 274 Mont. at 242, 907 P.2d at 156. Accordingly, the District Court did not err by granting summary judgment in favor of Lynn and the Mineral Trust on this issue.

¶11 The Estate also argues there was a genuine dispute of material fact as to whether there was a breach of written agreement regarding the Mineral Trust, because Robert

allegedly did not receive all the payments entitled to him under the trust. However, as the District Court determined, the evidence demonstrated that Robert received all four payments from the Mineral Trust, and that those payments represented the total amount due to Robert under the terms of the trust. Thus, there was no genuine issue of material fact, and Lynn and the Mineral Trust were entitled to judgment as a matter of law on this issue.

¶12 The Estate's additional arguments regarding material facts concern various statutes of limitation that the District Court determined barred the Estate's claims, thus entitling Lynn, the Mineral Trust, and Stockman to judgment as a matter of law. We consider these arguments in turn.

¶13 The Estate alleged there were disputed, material facts regarding its claim of breach of constructive trust, arguing Robert never received all payments he was entitled to from the Mineral Trust. Breach of constructive trust is governed by a three-year statute of limitation. Sections 27-2-202(3), -204(1), MCA. The Mineral Trust made its last payments on December 12 or 14, 2012. The applicable statute thus ran on December 12 or 14, 2015. Robert died on September 21, 2015, just a few months before the statute would have run, so § 27-2-404, MCA, applied to extend the statute of limitations one year from the date of death, to September 21, 2016. However, the Estate did not file its claim until December 4, 2017, rendering this claim time-barred.

¶14 The Estate also alleged conversion, claiming that Lynn took $90,000 from the Mineral Trust that was to be distributed to Robert, took out a loan in Robert's name, and

took money from the joint account that Robert and Lynn co-owned at Stockman. Conversion is governed by a two-year statute of limitation. Section 27-2-207, MCA. The Estate claims conversion occurred in September 2012 when the loan was taken out and December 2012 or January 2013 when the loan was repaid and funds were taken from the account, then again in October 2015 when Lynn closed the joint account at Stockman. The statute thus ran in December 2014 or January 2015, and October 2017, respectively. However, the Estate did not file its claim until December 4, 2017, rendering these claims time-barred. Further, Lynn was a co-owner of the account at all relevant times and was thus entitled to utilize the funds deposited to the account.

¶15 The Estate alleged fraud and breach of fiduciary duty, claiming that Lynn signed the loan with Stockman in Robert's name. Fraud is governed by a two-year statute of limitation, but the statute is tolled until the complaining party discovers the fraud. Section 27-2-203, MCA. Here, the loan was taken out and deposited to Robert's account on or about September 17, 2012, and repaid on December 31, 2012. At all relevant times, Robert received bank statements from Stockman at his address in Saco, Montana. Thus, Robert could have discovered this alleged fraud in December 2012 at the latest when the loan was repaid from his account, and it would have appeared on his bank statement no later than January 2013. The statute of limitation for fraud ran in January 2015, at least eight months prior to Robert's death on September 21, 2015, making this claim time-barred under the applicable statute of limitation.

¶16 Breach of fiduciary duty is governed by a three-year statute of limitation. Section 27-2-204(1), MCA. The loan was repaid in December 2012 and referenced on the bank statements mailed to Robert's address no later than January 2013. The statute of limitation for breach of fiduciary duty would have run in January 2016, because time remained when Robert died, extending the statute under § 27-4-204, MCA. However, the Estate did not file its claim until December 4, 2017, rendering this claim time-barred. Additionally, as discussed above, Lynn was an owner of the account to which the loan proceeds were deposited. As an owner, he was entitled to write checks on the account, appropriate the funds in the account, and take all action with respect to the account. The Estate identifies no fiduciary capacity undertaken by Lynn. Lynn did not have Robert's power of attorney in tact, but he was a co-owner of the account. Thus, even if the statute of limitation did not bar the breach of fiduciary duty claim, there is no material fact to support it, and Lynn and the Mineral Trust were entitled to judgment as a matter of law on this issue.

¶17 The Estate claimed Stockman concealed documents that would have allowed the Estate to discover the loan, and, as such, there was a genuine issue of material fact as to when it should have discovered its claims against Stockman, tolling the statute of limitations under § 27-2-102(3), MCA. However, the District Court concluded there was no evidence Stockman had engaged in affirmative actions to conceal the existence of the loan. Rather, Stockman sent account statements to Robert disclosing the existence and repayment of the loan. Stockman provided these same account statements and loan documents to the Estate on December 10, 2015, which was less than three months after

Robert's death. Thus, Robert and the Estate were in possession of the information they needed to pursue their claim against Stockman prior to the expiration of the statute of limitations under the most expansive theory. Although all the elements of the Estate's claim accrued during Robert's lifetime, he did not report any unauthorized transactions on his account with Stockman. The Estate's lack of knowledge regarding its claim does not postpone the statute of limitations and does not support application of the discovery rule. Accordingly, Stockman was entitled to judgment as a matter of law on this issue.

¶18 Even if the Estate's various claims were not time-barred by the statutes of limitations, the account agreement between Robert, Lynn, and Stockman bars the Estate's claim against Stockman, as the District Court concluded. The account agreement stated that Robert and Lynn, as joint owners of the account, had an affirmative duty to report any unauthorized signatures, forgeries, or other errors on the account within 60 days of receiving the statement. The account statement dated October 5, 2012, disclosed the deposit of the loan, and the statement dated January 5, 2013, disclosed the loan repayment. Stockman sent all the statements to Robert at his Saco address. Robert thus had until December 4, 2012, or March 5, 2013, at the latest, to report the alleged unauthorized transaction to Stockman. However, Robert did not report any unauthorized transactions, and the Estate did not file its claim until December 4, 2017, rendering this claim time-barred under the terms of the account agreement. Accordingly, Stockman was entitled to judgment as a matter of law on this issue.

¶19 The Estate's claim against Stockman is also time-barred under § 30-4-406, MCA, which imposes an affirmative duty upon a bank customer to report unauthorized transactions to the bank. The account statement dated October 5, 2012, disclosed the deposit of the loan, and the statement dated January 5, 2013, disclosed the loan repayment. Robert thus had until October 5, 2013, or January 5, 2014, at the latest, to report any unauthorized transactions to Stockman. However, Robert did not report any unauthorized transactions, and the Estate did not file its claim until December 4, 2017, making this claim time-barred under § 30-4-406, MCA.

¶20 Lynn, the Mineral Trust, and Stockman established that there were no genuine issues of material fact. The burden then shifted to the Estate, but as the District Court determined, it did not present material or substantial evidence of any issues of material fact to preclude summary judgment on the issues of breach of written agreement, breach of constructive trust, conversion, fraud, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, and the applicable statutes of limitation. Accordingly, Lynn, the Mineral Trust, and Stockman were entitled to judgment as a matter of law.

Rule 11 Sanctions and Attorney Fees

¶21 When considering a district court's grant or denial of Rule 11 sanctions, "we review de novo the district court's determination that the pleading, motion or other paper violates Rule 11. We review the district court's findings of fact underlying that conclusion to determine whether such findings are clearly erroneous. If the court determines that Rule 11 was violated, then we review the district court's choice of sanction for abuse of discretion."

Byrum v. Andren, 2007 MT 107, ¶ 19, 337 Mont. 167, 159 P.3d 1062. We "give the district courts wide latitude to determine whether the factual circumstances of a particular case amount to frivolous or abusive litigation tactics" because "[t]he district court has tasted the flavor of the litigation and is in the best position to make these kinds of determinations." *D'Agostino v. Swanson*, 240 Mont. 435, 446, 784 P.2d 919, 926 (1990) (internal quotations and citations omitted). Finally, "the language of Rule 11 is mandatory. If a district court finds that a pleading or motion is groundless or filed for an improper purpose, the court *shall* impose an appropriate sanction." *D'Agostino*, 240 Mont. at 448, 784 P.2d at 927 (emphasis in original).

¶22 The District Court found that Rule 11 sanctions were proper because the Defendants incurred attorney fees after December 2015, when the Estate had access to the necessary records of Stockman and should have possessed knowledge of the facts and law applicable to the case. Rule 11 requires pleadings and motions to be based on an attorney's "*reasonable inquiry*[,]" "*grounded in fact*[,]" and "*warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation*." *D'Agostino*, 240 Mont. at 444, 784 P.2d at 925 (quoting M. R. Civ. P. 11) (emphasis in original). Rule 11 prohibits parties from "bringing actions that are not well grounded in fact or warranted by existing law or that are brought for improper purposes, such as harassment or delay." *D'Agostino*, 240 Mont. at 444, 784 P.2d at 924.

¶23 Here, the record establishes the Estate had access to Stockman's records—records on which the entirety of the Estate's claims were based—in December 2015, two years before initiating suit, and thus the Estate should have had knowledge of the facts and law applicable to the case. In a deposition on October 19, 2017, the Estate admitted it possessed the Stockman records, in their entirety. Moreover, the records sought by the Estate were all records belonging to Robert, the decedent. As such, the Estate had full access to Robert's records. Accordingly, Lynn and the Mineral Trust were under no duty to obtain the Stockman records for the Estate. Rather, the Estate had an affirmative duty to conduct a "reasonable inquiry" into the Stockman records to determine whether its claims had any merit. These records contained the deposits of the mineral checks, signature cards, loan deposits, loan repayments, and loan documents, which are central to the Estate's claims. And, even if the Estate was not able to review the entirety of the Stockman records upon receiving them in December 2015, Lynn's counsel sent the Estate records on October 2, 2017, two months before the Estate filed suit, including the Stockman bank statements; the Mineral Trust income and disbursements; copies of checks written from the Mineral Trust to Robert; and Lynn's register from the Stockman account. Moreover, the Estate was made aware of the information in the Stockman records pertaining to its claims during a deposition on October 19, 2017, when Lynn's counsel asked whether the Estate had received a copy of the Stockman account card in the bank records. The Estate's counsel responded, "it might be in there. But that's something we can look for." Additionally, Lynn's counsel repeatedly advised the Estate, in response to discovery requests, that the

Estate had access to the Stockman records. Lynn's counsel also advised the Estate of potential Rule 11 issues and asked it to dismiss the complaint on March 13, 2018, but the Estate did not do so. Consequently, we conclude the District Court did not abuse its discretion by imposing sanctions, which are supported by substantial, credible evidence in the record.

¶24 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court's application of the law was correct, and did not abuse its discretion by entering sanctions and attorney fees.

¶25 Affirmed.

/S/ JIM RICE

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR