

No. 03-048

IN THE SUPREME COURT OF THE STATE OF MONTANA

2003 MT 178N

CARL ZARNDT and JANET ZARNDT,

Plaintiffs and Appellants,

v.

JOCK B. WEST,

Defendant and Respondent.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and for the County of Yellowstone, Cause No. DV-02-0779
The Honorable Gregory R. Todd, Judge presiding.

COUNSEL OF RECORD:

For Appellants:

Roy W. Johnson, Johnson Law Office, Billings, Montana

For Respondent:

Brian Kohn, Billings, Montana

Submitted on Briefs: June 5, 2003

Decided: July 10, 2003

Filed:

Clerk

Justice James C. Nelson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Internal Operating Rules, the following decision shall not be cited as precedent but shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number and result to the State Reporter Publishing Company and to West Group in the quarterly table of noncitable cases issued by this Court.

¶2 Carl Zarndt and Janet Zarndt (the Zarndts) appeal from the Thirteenth Judicial District Court's November 6, 2002 memorandum and order. In that decision, the court dismissed the Zarndts' claim for legal malpractice against Jock B. West (West) with prejudice. Further, the court denied West's motion for sanctions, pursuant to Rule 11, M.R.Civ.P. The court declined to address whether West committed malpractice but concluded that any claims by the Zarndts for malpractice against West were time-barred, pursuant to § 27-2-206, MCA. Regarding West's motion to sanction Roy W. Johnson, counsel for the Zarndts, the court concluded that the Zarndts' legal malpractice claim against West was not brought merely to harass, embarrass, delay or cause unnecessary litigation expense.

¶3 The Zarndts raise two issues on appeal, which they characterize as follows:

¶4 1. Whether the Zarndts were entitled to a hearing upon West's motion to dismiss;

¶5 2. Whether expiration of the statute of limitations in this case is a question of fact.

¶6 West recasts these issues as follows:

¶7 1. Whether substantial credible evidence exists to support the decision of the District Court.

¶8 After a careful review of the briefs, the record and the District Court's November 6, 2002 decision on appeal before us, we are satisfied that no disputed issues of material fact exist and sufficient evidence supports the trial court's findings of fact. The issues, however framed, are clearly controlled by settled Montana law. We conclude that the court's conclusions of law are correct and that the appeal is without merit.

¶9 Therefore, the District Court's decision is affirmed.

/S/ JAMES C. NELSON

We Concur:

/S/ KARLA M. GRAY

/S/ W. WILLIAM LEAPHART

/S/ JIM REGNIER

/S/ JOHN WARNER