

DA 10-0408

IN THE SUPREME COURT OF THE STATE OF MONTANA

2011 MT 103N

IN THE MATTER OF THE ESTATE OF

HELEN D. SCHOTT,

Deceased.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. BDP-01-117
Honorable Julie Macek, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Steven T. Potts, Steven T. Potts, PLLC; Great Falls, Montana
(Attorney for Appellants Dale Schott and Sharon Crisp)

For Appellee:

Jean Faure, Jason T. Holden; Faure Holden Attorneys at Law, P.C.,
Great Falls, Montana (Attorneys for Appellee James Schott)

Submitted on Briefs: April 20, 2011

Decided: May 12, 2011

Filed:

Clerk

Chief Justice Mike McGrath 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 noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Dale Schott and Sharon Crisp moved the District Court, Eighth Judicial District, Cascade County, to set aside a 2007 order removing Crisp as co-representative of Helen Schott's Estate. The District Court declined to rule on the motion and it was deemed denied. We affirm.

¶3 In 2001, F. James Schott (James) and Crisp were named co-personal representatives of Helen Schott's Estate. On May 14, 2007, the District Court ordered Crisp to appear at a hearing and show cause for failure to sign the Estate's inventory. Although Crisp received notification of this hearing, she and her attorney opted to not attend. At the hearing, James petitioned to have Crisp removed as co-personal representative of the Estate. The District Court granted that motion.

¶4 Six days after the District Court hearing, Crisp filed a motion objecting to her removal and seeking reinstatement. The District Court never ruled on the motion, and it was deemed denied. Crisp made no attempt to appeal either her removal or the denial of her subsequent motion.

¶5 On June 4, 2010, Crisp moved to set aside the 2007 order removing her as co-personal representative, pursuant to M. R. Civ. P. 60(b).¹ The District Court failed to rule on the motion and it was deemed denied. She appeals that denial.

¶6 Crisp's Rule 60(b) motion is an improper attempt to circumvent her deliberate decision to forgo appellate review in 2007. "Generally, failure to appeal for almost any reason is fatal to a motion to reopen judgment under Rule 60(b). If allowed, it would in essence make a Rule 60(b) motion a substitute for appeal, which is an improper use of the motion." *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 29, 338 Mont. 423, 166 P.3d 451. Although application of this rule can be excused in cases of extreme hardship or injustice, *Koch v. Billings Sch. Dist. No. 2*, 253 Mont. 261, 271-72, 833 P.2d 181, 187 (1992), those circumstances are starkly absent here. In 2007, Crisp was aware of the error she now alleges, consciously failed to exhaust her judicial remedies, and thus lost the opportunity to litigate the issues she now seeks to raise. *Butler v. Colwell*, 1998 MT 241, ¶¶ 17-18, 291 Mont. 134, 967 P.2d 779.

¶7 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for noncitable memorandum opinions. The issues in this case are legal and are controlled by settled Montana law. Crisp's Rule 60(b) motion was properly denied.

¹ Crisp also makes passing reference to Rules 52 and 59 but declined to make a substantive legal argument. We decline to address Rules 52 and 59, because "it is not this Court's obligation to conduct legal research on behalf of a party or to develop legal analysis that might support a party's position." *State v. Gunderson*, 2010 MT 166, ¶ 12, 357 Mont. 142, 237 P.3d 74.

¶8 Affirmed.

/S/ MIKE McGRATH

We concur:

/S/ JAMES C. NELSON
/S/ PATRICIA COTTER
/S/ BRIAN MORRIS
/S/ JIM RICE