

DA 17-0002

IN THE SUPREME COURT OF THE STATE OF MONTANA

2017 MT 115N

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CARALEE FORTIN,

Plaintiff and Appellee,

v.

BETHANY NOT AFRAID,

Defendant and Appellant.

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APPEAL FROM: District Court of the Twelfth Judicial District,  
In and For the County of Hill, Cause No. DV-2016-124  
Honorable Daniel A. Boucher, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Terryl T. Matt, Matt Law Office, PLLC, Cut Bank, Montana

For Appellee:

Caralee Fortin (Self-Represented), Havre, Montana

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Submitted on Briefs: April 19, 2017

Decided: May 9, 2017

Filed:



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Clerk

Justice Michael E Wheat 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 Bethany Not Afraid appeals the order of the Twelfth Judicial District Court, Hill County, denying her appeal of an order of protection. We affirm.

¶3 In September 2016, Caralee Fortin filed a petition for an order of protection in the Hill County Justice Court alleging that Not Afraid attacked her and she feared for her safety. The Justice Court issued a temporary order of protection on September 23, 2016, and subsequently conducted a hearing on October 21, 2016. At the close of the hearing, the Justice Court issued a protective order effective until October 2018. Not Afraid filed an appeal with the Twelfth Judicial District Court pursuant to § 40-15-302, MCA. The District Court "denied" her appeal on December 2, 2016. Not Afraid filed a timely appeal.

¶4 Not Afraid asserts that the District Court did not "review" the protective order or the Justice Court record as required by § 40-15-302, MCA. She also claims that, under the statute, the only District Court actions allowed were to affirm, dissolve, or modify the order.

¶5 Fortin counters that the transcript of the hearing and the entire file of the original proceedings were submitted to the District Court on November 1, 2016. It is her contention that the District Court “had and took time to review the transcripts and the entire file.”

¶6 Section 40-15-302(1), MCA, provides:

An order issued by a justice’s court, municipal court, or city court pursuant to 40-15-201 is immediately reviewable by the district judge upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a justice’s court, municipal court, or city court made pursuant to 40-15-201 or 40-15-204.

¶7 The District Court’s order recited the Justice Court’s hearing date, referenced relevant facts such as Not Afraid being represented by counsel at the hearing and Fortin acting pro se, and repeated the terms of the protective order. It concluded that Not Afraid had failed to establish error on the part of the Justice Court. Such a conclusion is tantamount to affirming the Justice Court’s order of protection. Rule 17 of the Montana Uniform Municipal Court Rules of Appeal to District Court, Title 25, chapter 30, part 2400, MCA, applies to the district court’s review of the justice court.<sup>1</sup> It states: “The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.”

¶8 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 District Court’s findings of fact are not clearly erroneous, its interpretation and application of the law were correct and its ruling was not an abuse of discretion.

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<sup>1</sup> See § 3-10-115(4), MCA.

¶9 Affirmed.

/S/ MICHAEL E WHEAT

We Concur:

/S/ MIKE McGRATH

/S/ BETH BAKER

/S/ LAURIE McKINNON

/S/ JAMES JEREMIAH SHEA