

DA 17-0693

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 244N

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WILLIAM JORGENSEN ON BEHALF OF AND AS  
PERSONAL REPRESENTATIVE OF CHRISTOPHER  
JORGENSEN, DECEASED, AND MYSELF,

Plaintiff and Appellant,

v.

TODD A STUBBS,

Respondent and Appellee.

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APPEAL FROM: District Court of the Eighteenth Judicial District,  
In and For the County of Gallatin, Cause No. DV 16-568C  
Honorable John C. Brown, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

William Jorgensen, self-represented, Williston, North Dakota

For Appellee:

Denny K. Palmer, Wall, McLean & Gallagher, PLLC, Helena, Montana

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Submitted on Briefs: September 12, 2018

Decided: October 2, 2018

Filed:



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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 Appellant William Jorgensen (Jorgensen) challenges the entry of summary judgment herein by the Eighteenth Judicial District Court in favor of Appellee Todd A. Stubbs (Stubbs), on all claims, on the ground that Jorgensen's action was time barred.

¶3 The factual and procedural history of this matter dates back over 14 years, including a previous appeal to this Court. *Jorgensen v. Gallatin County*, 2011 MT 158N, 264 P.3d 519 (*Jorgensen I*). In April 2004, Jorgensen's son, Christopher Jorgensen (Christopher), died of a gunshot wound to the head after taking a former girlfriend, A.G., hostage in her Gallatin County home and assaulting her, leading to a standoff with police. *Jorgensen I*, ¶ 3. A law enforcement investigation concluded that Christopher's death was a suicide. *Jorgensen I*, ¶ 6. Jorgensen did not believe Christopher committed suicide, but had been murdered, and after his own investigation, became even more convinced. *Jorgensen I*, ¶ 8.

¶4 In March 2007, Jorgensen filed a lawsuit against Gallatin County, including the Gallatin County Sheriff and Coroner, which sought a reopening of the investigation into Christopher's death to consider the additional information gathered by Jorgensen, an order

changing the cause of Christopher's death from suicide to homicide, and an award of damages to Jorgensen and Christopher's Estate.

¶5 Stubbs, an attorney, represented the Gallatin County Defendants in *Jorgensen I*, which was heavily litigated. Stubbs filed numerous pre-trial motions in limine to exclude evidence at trial, including Jorgensen's expert testimony, Jorgensen's non-expert opinion testimony, and other irrelevant evidence. Then, during trial, which was held in January 2010 and lasted nine days, Stubbs moved for and obtained an order from the District Court preventing A.G., who was subpoenaed by Jorgensen to testify, from invoking her Fifth Amendment privilege in front of the jury, on the ground that it would be prejudicial to Gallatin County. The order was issued over Jorgensen's objection. On January 21, 2010, the jury returned a verdict in favor of the Gallatin County Defendants, specifically finding that Christopher's death was a result of suicide. *Jorgensen I*, ¶ 10. Jorgensen appealed, and on June 28, 2011, this Court issued its opinion affirming the verdict and judgment, concluding there was no reversible error. *Jorgensen I*, ¶ 14.

¶6 In February 2014, Jorgensen filed an informal ethics complaint against Stubbs with the Office of Disciplinary Counsel (ODC). ODC dismissed the complaint and the dismissal was upheld by the Commission on Practice, and by this Court, upon requests for review by Jorgensen. Jorgensen was advised on at least two occasions that all matters related to the ethics proceeding were required to remain confidential.

¶7 In July 2016, Jorgensen filed the present action against Stubbs. The complaint alleged that Stubbs was part of a conspiracy "with State Officials at the highest level" to keep evidence from the jury during the trial in *Jorgensen I*, defrauding the court.

Jorgensen's complaint sought civil rights and criminal investigations of Stubbs, disbarment of Stubbs, and payment of \$24 million in damages. In its summary judgment order, the District Court noted that Jorgensen's complaint "does not assert or identify any specific cause of action," but asserted civil conspiracies, civil rights violations, and violations of the Montana Rules of Civil Procedure, the Montana Code of Ethics, and several Montana statutes.<sup>1</sup>

¶8 Starting in September 2016, Stubbs filed motions seeking to prohibit Jorgensen from introducing, in this proceeding, evidence related to the ethics proceeding Jorgensen had attempted to initiate against Stubbs, because the complaint herein referenced claims Jorgensen had made in that proceeding. The District Court granted Stubbs' motion in limine, which Jorgensen challenged in a petition for writ of supervisory control filed with this Court in February 2017. We denied the writ, stating we were "not persuaded that the District Court has committed a legal error to warrant supervisory control," and that Jorgensen would have the remedy of appeal following final judgment. *Jorgensen v. Mont. Eighteenth Judicial Dist. Court*, No. OP 17-0114, 387 Mont. 537, 391 P.3d 733 (table) (March 7, 2017).

¶9 Stubbs moved the District Court for summary judgment on the ground that all of Jorgensen's claims were time barred. What followed was the filing of numerous motions

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<sup>1</sup> The District Court analyzed whether the complaint was sufficiently pled, reasoning that "Jorgensen's inflammatory rhetoric aside, his allegations of 'fraud upon the court' amount to nothing more than indignation about, and vehement disagreement with, each and every evidentiary ruling made by the district court in *Jorgensen I.*" However, in light of its primary ruling that the action was barred by the statute of limitations, the court concluded that this issue was moot.

and responses regarding the evidence and arguments that were properly before the court for purposes of the court's consideration of summary judgment, concluding with the District Court striking three efforts by Jorgensen to introduce new evidence on the ground that the evidence was improper.

¶10 Analyzing the application of the statute of limitation, the District Court first concluded that it would apply the longer, or three-year, statute for general or personal injury torts. Assessing Jorgensen's claims, the court noted that "Jorgensen's alleged injuries are a direct result of the adverse judgment reached against him in *Jorgensen I*," and that the allegations, as stated in the complaint, concerning a "conspiratorial effort to control what kind of evidence was available to the court and jury," apparently were premised upon the multiple motions in limine filed by Stubbs on behalf of the Gallatin County Defendants. Setting aside the question of whether Jorgensen's claims had legal merit, the District Court stated that the "dispositive question . . . is simply whether the date of Mr. Jorgensen's alleged injury occurred outside the applicable statute of limitations," and reasoned as follows:

[I]t is readily apparent that [Jorgensen's] claims accrued more than five years prior to the filing of his Complaint on July 27, 2016. . . . Since Mr. Jorgensen's alleged injuries all relate to the district court's evidentiary rulings in *Jorgensen I*, any perceived injustice resulting from the exclusion of evidence and testimony became actionable when the Supreme Court affirmed the district court's judgment on appeal. As a result, Mr. Jorgensen suffered his alleged injuries no later than June 28, 2011—the date that the Supreme Court affirmed the final judgment in *Jorgensen I*.

The District Court rejected Jorgensen's argument that "new evidence" he had discovered in subsequent years had extended the time for filing an action, reasoning that, despite any

new evidence, Jorgensen had actual knowledge of the evidence that had been excluded from the jury and, for purposes of his claims in this action, his damages were manifest when *Jorgensen I* became final. Further, the court concluded that reasonable diligence would have led Jorgensen to discover any further evidence within the three-year limitation period.

¶11 On appeal, Jorgensen argues extensively that Stubbs' motions in limine in this action were improperly granted, and that evidence from the ethics proceeding should have been admitted, as it formed the basis of Jorgensen's claim that Stubbs had committed a fraud upon the court by withholding evidence. We perceive from his briefing that Jorgensen also challenges the District Court's application of the statute of limitations on the ground that the facts of his claim were concealed by Stubbs and, lastly, he asserts that the District Court acted out of bias and prejudice against him. Jorgensen's strong feelings and extensive efforts over the manner of his son's death notwithstanding, the record here does not support his claims.

¶12 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, which the District Court correctly applied.

¶13 Affirmed.

/S/ JIM RICE

We concur:

/S/ DIRK M. SANDEFUR

/S/ LAURIE McKINNON

/S/ BETH BAKER