

DA 17-0708

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 146N

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HEATHER ERIN WYLIE,

Plaintiff and Appellant,

v.

MONTANA WOMEN'S PRISON,

Defendant and Appellee.

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APPEAL FROM: District Court of the Thirteenth Judicial District,  
In and For the County of Yellowstone, Cause No. DV-11-887  
Honorable Rod Souza, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Heather Erin Wylie, Self-Represented, Billings, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Ira Eakin, Special Assistant  
Attorney General, Helena, Montana

Scott D. Twito, Yellowstone County Attorney, Billings, Montana

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Submitted on Briefs: May 16, 2018

Decided: June 12, 2018

Filed:



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Clerk

Justice Laurie McKinnon 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 Heather Erin Wylie appears as a self-represented litigant and appeals a November 14, 2017 Closing Order, issued in the Thirteenth Judicial District Court, Yellowstone County. Wylie asserts that the District Court erred in closing her case without providing notice to her as required by the Rules of Practice of the Thirteenth Judicial District.<sup>1</sup> We affirm.

¶3 Wylie filed a Complaint in June 2011 against Montana Women's Prison (MWP), where she is currently incarcerated, alleging MWP did not allow Wylie to appear by video-conference for her dissolution proceedings. Wylie's dissolution occurred in the Fifth Judicial District Court in April 2011. Wylie alleges MWP's failure was tortious because she was present in the conference room all afternoon, waiting for her proceeding. After receiving the summons from the Clerk of Court on November 7, 2011, Wylie mailed it along with her complaint and a praecipe to the MWP's Legal Counsel at the Department of Corrections in Billings, Montana, on November 10, 2011. In January 2012, Wylie

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<sup>1</sup> Montana's Uniform District Court Rules allow for any District Court to establish local rules. Section 25-19-Rule 15, MCA.

moved for default judgment in the District Court explaining that the documents had not been returned via the prison mail system. Wylie did indicate she had not received an acknowledgment of service or response from MWP. She included with her motion an affidavit of service attesting that she had mailed her complaint to MWP. On February 23, 2012, the District Court, referring to M. R. Civ. P. 4(d), denied Wylie's motion because "the file does not reflect proper service on Defendant [MWP]."

¶4 During the next two years, the District Court received no filings. On March 18, 2014, having recognized the case's inactivity, the District Court issued a Notice pursuant to Local Rule 9 that the case may be dismissed. Local Rule 9 provides:

When no proceedings have been taken in any civil cause for a period of one year, the action will be dismissed on its merits and/or the file closed by the Court on its own motion after twenty (20) days notice of such intended dismissal unless good cause to the contrary is shown.

Wylie filed a response. However, the next day the court issued an order dismissing the case because no proceeding had taken place for more than one year. Wylie filed a Notice of Appeal with this Court on April 25, 2014, for which she later moved to dismiss. *Wylie v. MWP*, No. DA 14-0241, Order granting motion to dismiss without prejudice (Mont. May 13, 2014).

¶5 On May 1, 2014, the District Court set aside the dismissal. In its Order, the court, acknowledged that Wylie's response was received but was not "physically in the file[.]" and stated: "[s]ervice on the Defendant is still in question . . ." and Wylie "does not say she also sent the required Notice and Acknowledgment of Service for the Department of

Corrections to sign . . . .” Wylie then filed several motions and accompanying documents to demonstrate that MWP had actual knowledge of service. On October 2, 2014, the District Court issued a Notice in which the court recognized that Wylie certified she mailed various pleadings to counsel for MWP; but, nonetheless, because there was not an acknowledgment of service received from MWP, Wylie was required to serve MWP pursuant to the Montana Rules of Civil Procedure.

¶6 On January 5, 2015, a new judge assumed jurisdiction in the underlying proceeding. Wylie filed a Notice with the court explaining that she again sent her complaint and summons to MWP’s Legal Counsel on May 18, 2015. Wylie moved again for default judgment on November 16, 2015. Nothing more happened in these proceedings until November 14, 2017, when the District Court, without providing Wylie notice required by Local Rule 9, closed the case again for inactivity. Wylie appealed.

¶7 “The court’s decision to dismiss for failure to prosecute will be overturned only upon a showing of abuse of discretion.” *Becky v. Norwest Bank Dillon, N.A.*, 245 Mont. 1, 7, 798 P.2d 1011, 1015 (1990). “A court abuses its discretion if it acts ‘arbitrarily without conscientious judgment or exceed[s] the bounds of reason.’” *HSBC Bank USA, N.A. v. Anderson*, 2017 MT 257, ¶ 17, 389 Mont. 106, 406 P.3d 416 (citations omitted).

¶8 Wylie raises several arguments in her briefs and contends that her due process rights have been violated because the District Court failed to provide notice before closing the case as required by Local Rule 9. In its answer, MWP maintains that Wylie’s complaint and summons were never properly served as required by the Montana Rules of Civil

Procedure. MWP further articulates that the District Court did not abuse its discretion and acted within its authority in closing Wylie's case.

¶9 The dispositive issue before this Court is whether Wylie perfected service on MWP. We conclude she did not. Wylie mailed the summons and her complaint, but she did not include copies of the notice and acknowledgment of service as required by M. R. Civ. P. 4(d)(3)(A)-(E). "Rules for service of process are mandatory and must be strictly followed." *Semenza v. Kniss*, 2005 MT 268, ¶ 18, 329 Mont. 115, 122 P.3d 1203. The District Court correctly noted and attempted to explain in its Notices and Orders the measures Wylie needed to take to perfect service upon MWP. Wylie did not follow any of these requirements. Her arguments that she effectuated service because counsel for MWP knew and was actually aware of these proceedings fail. "Actual knowledge is not a substitute for valid service." *Ioerger v. Reiner*, 2005 MT 155, ¶ 18, 327 Mont. 424, 114 P.3d 1028 (citations omitted).

¶10 Wylie's various ineffective efforts to serve MWP over several years do not cure defective service. *Semenza*, ¶¶ 18–19. The District Court, consequently, closed the case for failure to prosecute. "There is no precise formula for determining when an action may properly be dismissed for failure to prosecute." *Becky*, 245 Mont. at 7, 798 P.2d at 1015. Here, Wylie commenced this case more than six years ago and MWP has never properly been served. Notice by the court prior to the case's dismissal would not have cured the underlying problem of MWP not having been properly served. The District Court did not

act without conscientious judgment or exceed the bounds of reason when it dismissed the case. *Anderson*, ¶ 17.

¶11 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. The District Court's ruling was not an abuse of discretion. 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.

/S/ LAURIE McKINNON

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ INGRID GUSTAFSON

/S/ JIM RICE