

DA 18-0197

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 260N

IN THE MATTER OF THE ESTATE OF:

LUCILLE K. HADER,

Deceased.

APPEAL FROM: District Court of the Seventeenth Judicial District,
In and For the County of Blaine, Cause No. DP-2013-24
Honorable Yvonne Laird, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Kathleen A. Molsberry, Lowy Law, PLLC, Missoula, Montana

For Appellee:

Jennifer E. Forsyth, Hi-Line Law, PLLC, Havre, Montana

Submitted on Briefs: September 12, 2018

Decided: October 23, 2018

Filed:



Clerk

Justice Beth Baker 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 Richard Hader ("Richard"), as personal representative of the estate of Lucille K. Hader ("Lucille"), appeals an order from the Seventeenth Judicial District Court, Blaine County, denying his motion to set aside default judgment. We affirm.

¶3 Lucille died on November 19, 2012. The District Court appointed Lucille's son Richard as the personal representative of the estate in September 2013. After two extension orders from the District Court, in which the court found that good cause existed for failure to close the estate within two years under § 72-3-1015(2), MCA, the District Court held a third status hearing in January 2018. Richard's counsel failed to appear at the hearing, and the District Court closed the estate on a motion from Roxann Caraway, Lucille's granddaughter. Richard filed a motion to set aside the default judgment under M. R. Civ. P. 60(b). The District Court denied the motion, finding that Richard failed to state any injury to the estate if default judgment were to stand. Richard appeals.

¶4 We review a district court's denial of a motion to set aside a default judgment for a slight abuse of discretion. *DeTienne v. Sandrock*, 2017 MT 181, ¶ 22, 388 Mont. 179, 400 P.3d 682. A court may set aside a default judgment if the defendant shows that the

judgment resulted from “mistake, inadvertence, surprise, or excusable neglect.” M. R. Civ. P. 60(b)(1). In analyzing a motion to set aside a default judgment under M. R. Civ. P. 60(b)(1), the district court considers: (1) whether the defaulting party proceeded with diligence; (2) whether the defaulting party’s neglect was excusable; (3) whether the defaulting party had a meritorious defense to the claim; and (4) whether the judgment would affect the defaulting party injuriously if permitted to stand. *DeTienne*, ¶ 29. Our review focuses on whether the District Court abused its discretion, even slightly, when conducting this analysis. *DeTienne*, ¶ 22.

¶5 The District Court concluded that Richard proceeded with diligence, because he filed his motion to set aside the judgment within one week of its issuance. The court determined that the neglect of Richard’s counsel was excusable, because his counsel had attempted to appear telephonically at the third status hearing, not realizing she had to request the court’s approval to do so. These conclusions are not challenged on appeal. Richard alleges that allowing the closing of the estate to stand would be injurious to the estate.

¶6 Before the District Court, Richard argued that allowing the judgment to stand would be injurious to him, not to the estate. He attached an affidavit to his reply brief, challenging several property conveyances to Caraway that occurred years before Lucille’s death and alleging that Caraway was in possession of and has refused to return personal property belonging to the estate. On appeal, Richard argues that the estate would be injured if it is not reopened, because he will not be able to recover this property. At no point in the five years that the estate was open, however, did Richard file an action

to recover possession of property or to determine the title to property. *See* § 72-3-606(2), MCA. Richard's alleged injuries to the estate are speculative. Richard has failed to carry his burden on appeal to show that the District Court abused its discretion in determining that the estate would not be injured if the default judgment was not set aside. We conclude that the District Court did not slightly abuse its discretion in denying Richard's motion to set aside default judgment.

¶7 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. The District Court's ruling was not a slight abuse of discretion.

/S/ BETH BAKER

We Concur:

/S/ DIRK M. SANDEFUR
/S/ JIM RICE
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON