DA 14-0390

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 218N

MARY SATTERFIELD,

Plaintiff, Counterclaim Defendant, and Appellee,

v.

MARTY MACIEL and RICHARD WRIGHT,
d/b/a CENTRAL MONTANA BAIL BONDS,

Defendants, Counterclaim Plaintiffs, and Appellants.

APPEAL FROM: District Court of the Tenth Judicial District,
In and For the County of Fergus, Cause No. DV 13-18
Honorable Jon A. Oldenburg, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Marybeth M. Sampsel, Measure Law, P.C., Kalispell, Montana

For Appellee:

Torger Oaas, Oaas Law Offices, Lewistown, Montana

Submitted on Briefs: August 21, 2019

Decided: September 10, 2019

Filed:

Clerk

Justice Ingrid Gustafson 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 Defendant, Counterclaim Plaintiff, and Appellant Marty Maciel (Maciel) appeals the Findings of Fact and Conclusions of Law, as well as the accompanying Judgment, issued by the Tenth Judicial District Court, Fergus County, on May 21, 2014, following a bench trial which found in favor of Plaintiff, Counterclaim Defendant, and Appellee Mary Satterfield (Satterfield). We affirm.

¶3 In approximately 2008, Satterfield and Richard Wright (Wright) began a bail bonds business known as Central Montana Bail Bonds (CMBB). Satterfield and Wright were equal partners in the business. In February 2012, Satterfield sold her stake in CMBB to Maciel for $83,600, plus interest, through a written Sales Agreement. Maciel was to pay Satterfield $1500 per month over a period of 60 months, or until all principal and interest due were paid in full. After selling her ownership stake to Maciel, Satterfield continued to work at CMBB as a non-liable sub-producer. Pursuant to the terms of the Sales Agreement, Satterfield was to be paid a 20% commission for all bonds posted and money collected from bonds she wrote. Satterfield was also to be paid a 25% commission on accounts receivable—bonds written prior to Satterfield selling her stake in CMBB through the Sales Agreement.

¶4 Maciel did not make the required payments to Satterfield under the terms of the Sales Agreement, and Satterfield filed suit for breach of contract against Maciel and Wright in February 2013. In April 2013, Satterfield amended her complaint to include a claim of unjust enrichment if the Sales Agreement was found to be unenforceable. Attached to both the Complaint and Amended Complaint was a copy of the Sales Agreement—a three-page document which listed the terms of the sale and also contained the terms of Satterfield's exclusive non-liable sub-producer position at CMBB until Maciel's purchase was paid in full. Maciel and Wright filed a counterclaim against Satterfield, alleging numerous counts against Satterfield stemming from bonds she wrote in her non-liable sub-producer role.

¶5 On March 26, 2014, the District Court held a bench trial. Relevant to the present appeal, the District Court admitted Plaintiff's Exhibit 3, a copy of the Sales Agreement which was identical to the previously-produced copies of that agreement attached to both Satterfield's Complaint and Amended Complaint. Exhibit 3 was listed as an exhibit for the Plaintiff in the pretrial order. Counsel for the Defendants objected to the admission of Plaintiff's Exhibit 3 at trial, alleging that the Sales Agreement was actually a four-page document that contained a fourth page titled "Letters of Underwriting Authority and Instructions for Appearance Bond" (underwriting terms). Satterfield testified that the Sales Agreement did not contain a fourth page of underwriting terms when she signed it, and the District Court admitted Plaintiff's Exhibit 3 over objection. Later in the trial, counsel for the Defendants repeatedly attempted to admit Defendants' Exhibit T, a copy of the underwriting terms which the Defendants claim was attached to the Sales Agreement. The District Court repeatedly denied the Defendants' attempts to admit Exhibit T, finding that

it was not listed on the pretrial order. On May 21, 2014, the District Court issued its Findings of Fact and Conclusions of Law, which found in favor of Satterfield on her breach of contract claim and dismissed the Defendants' counterclaims. Also on May 21, 2014, the District Court entered its Judgment, ordering the Defendants to pay Satterfield damages from both the sale and commissions from bonds she wrote.

¶6 The Defendants appealed the District Court's Judgment to this Court in 2014. After filing their opening brief, Wright filed for bankruptcy and the matter was stayed pending the completion of those proceedings. In 2019, this Court received notice that Wright's bankruptcy proceedings had concluded. We ordered the parties to provide a status report as to whether they intended to proceed with the appeal. Counsel for the Appellants filed a status report on June 12, 2019, which informed the Court that Wright had agreed not to proceed with this matter and would file a signed consent to voluntarily dismiss the appeal as it relates to him,[1] but that Maciel intended to proceed with the appeal.

¶7 We review a district court's decision to admit or exclude evidence for an abuse of discretion. *Cleveland v. Ward*, 2016 MT 10, ¶ 9, 382 Mont. 118, 364 P.3d 1250. A district court abuses its discretion when it acts arbitrarily without conscientious judgment or exceeds the bounds of reason. *Seltzer v. Morton*, 2007 MT 62, ¶ 65, 336 Mont. 225, 154 P.3d 561 (citation omitted).

¶8 Maciel argues that the District Court erred by refusing to admit Defendants' Exhibit T at trial. Exhibit T purported to contain a copy of the underwriting terms, which Maciel

[1] Although Wright never filed his signed consent to voluntarily dismiss the appeal, he has taken no further action in this matter and we deem his appeal abandoned.

argues were attached as the fourth page of the Sales Agreement with Satterfield. Satterfield objected to the admission of Exhibit T, and the District Court did not admit the exhibit because it was not listed on either the exhibit list or the pretrial order.

¶9 The purpose of pretrial orders is to simplify issues, prevent surprise and allow counsel to prepare their cases for trial based on the pretrial order. *Travelers Indem. Co. v. Andersen*, 1999 MT 201, ¶ 34, 295 Mont. 438, 983 P.2d 999 (citing *State ex rel. State Comp. Mut. Ins. Fund v. Berg*, 279 Mont. 161, 180, 927 P.2d 975, 986 (1996)). "[W]e often have held that parties may not assert issues or other matters which were not included in the pretrial order." *Travelers*, ¶ 34 (citations omitted). "More specifically, we previously have held that a district court erred in admitting evidence not listed as an exhibit in the pretrial order." *Travelers*, ¶ 34 (citing *Workman v. McIntyre Const. Co.*, 190 Mont. 5, 11-12, 617 P.2d 1281, 1284-85 (1980)).

¶10 Maciel admits that Exhibit T was not contained in the pretrial order. He argues, however, that the District Court should have admitted Exhibit T as "rebuttal evidence" after Satterfield testified that the Sales Agreement did not contain an attachment.

¶11 A party is not required to give advance notice of witnesses or evidence offered as rebuttal. *Travelers*, ¶ 36 (citing *Valley Properties LP v. Steadman's Hardware, Inc.*, 251 Mont. 242, 250, 824 P.2d 250, 255 (1992)). Rebuttal evidence is "evidence offered to counteract new matter presented by the adverse party." *Travelers*, ¶ 36 (citing *Massman v. Helena*, 237 Mont. 234, 243, 773 P.2d 1206, 1211 (1989)).

¶12 In this case, Exhibit T was not offered to counter any new evidence presented by Satterfield. From the first Complaint filed in this matter, on February 20, 2013, and

continuing through to her testimony at trial, Satterfield has represented the Sales Agreement as a three-page document with no attached underwriting terms. Satterfield's testimony at trial that the Sales Agreement was a three-page document with no attached underwriting terms was not "a new matter presented by the adverse party." *Travelers*, ¶ 36. We conclude that Exhibit T was not rebuttal evidence and was properly excluded at trial because Maciel did not list it as an exhibit in the pretrial order.

¶13 The interpretation of a written contract is a question of law, which we review to determine whether the district court's interpretation is correct. *King Res., Inc. v. Oliver*, 2002 MT 301, ¶ 18, 313 Mont. 17, 59 P.3d 1172 (citing *Eschenbacher v. Anderson*, 2001 MT 206, ¶ 21, 306 Mont. 321, 34 P.3d 87). "If the terms of a contract are unambiguous, a court must apply the language of the contract as written." *Estate of Irvine v. Oaas*, 2013 MT 271, ¶ 22, 372 Mont. 49, 309 P.3d 986 (citing *State v. Asbeck*, 2003 MT 337, ¶ 18, 318 Mont. 431, 80 P.3d 1272). A court may only turn to extrinsic evidence when an ambiguity exists. *Rich v. Ellingson*, 2007 MT 346, ¶ 15, 340 Mont. 285, 174 P.3d 491 (citation omitted).

¶14 Finally, Maciel argues that the District Court erred by determining that the Sales Agreement was unambiguous. "Ambiguity does not exist just because a claimant says so." *Holmstrom v. Mut. Benefit Health & Accident Ass'n*, 139 Mont. 426, 428, 364 P.2d 1065, 1066 (1961). We agree with the District Court that the three-page Sales Agreement was not ambiguous, and therefore the District Court correctly refused to consider extrinsic evidence when interpreting it. *Rich*, ¶ 15. The District Court's May 21, 2014 Findings of Fact and Conclusions of Law are well-reasoned, thorough, and supported by the record.

There is no basis in either law or fact to overturn the District Court's judgment in this matter.

¶15 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.

¶16 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR
/S/ LAURIE McKINNON