

DA 18-0052

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 16N

STATE OF MONTANA, RAVALLI COUNTY,
and RAVALLI COUNTY BOARD OF HEALTH,

Plaintiffs and Appellants,

v.

TIMOTHY D. BURT,

Defendant, Appellee, and Cross-Appellant.

STATE OF MONTANA, RAVALLI COUNTY,
and RAVALLI COUNTY BOARD OF HEALTH,

Plaintiffs and Appellants,

v.

ELAINE L. BURT,

Defendant, Appellee, and Cross-Appellant.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause Nos. DC-17-103; DC-17-104
Honorable Jeffrey H. Langton, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Bill Fulbright, Ravalli County Attorney, Daniel Browder, Deputy County
Attorney, Hamilton, Montana

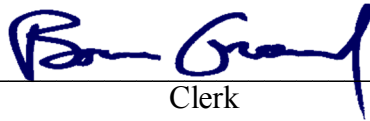
For Appellees:

Rachel H. Parkin, Milodragovich, Dale & Steinbrenner, P.C., Missoula,
Montana

Submitted on Briefs: January 3, 2019

Decided: January 22, 2019

Filed:



A handwritten signature in blue ink, appearing to read "Ben Grand", is written over a horizontal line. The signature is stylized and cursive.

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 Timothy D. Burt and Elaine L. Burt (the "Burts") own approximately one acre of property in Florence, Montana, that includes four rental units: a house, two mobile homes, and a former shop that was converted into residential space. In December 2014 or January 2015, a tenant of the Burts complained to the Ravalli County Environmental Health Department about untreated sewage flowing on the property.

¶3 The Burts and their attorney reached an oral agreement with the Ravalli County Board of Health to rectify the issues. The Burts agreed, among other things, to pay the County \$8,400 in fines, to terminate a tenant's lease and disconnect one of the trailers from the septic system, and to obtain a proper permit for the shop. The Burts took action on the agreement, obtaining a permit to connect the converted shop to the existing septic system. They also "gutted" one of the trailers and disconnected it from the septic system. When the Board of Health provided the Burts with a draft of the agreement in writing, it included a provision stating: "A. Admission: The Burts admit that they violated the Wastewater Regulations." The Burts refused to accept this term. The Board of Health refused to

execute the agreement without the term. The Board of Health voted not to execute the agreement and to instead move forward with litigation against the Burts.

¶4 In December 2016, the County filed separate, identical criminal complaints against each of the Burts in Justice Court for: (1) misdemeanor failure to comply with rules adopted by a local board of health (819 counts), in violation of § 50-2-124, MCA; and (2) misdemeanor failure to comply with rules governing tourist campgrounds and trailer courts (248 counts), in violation of § 50-52-103 and -105, MCA. The charges included a separate count for each day that the County alleged the Burts were in violation of the rules. The Affidavit of Probable Cause asserted that the Burts had remedied the violations but that they refused to acknowledge they violated the laws and regulations.

¶5 The Burts moved the Justice Court to dismiss the charges for malicious and vindictive prosecution. The Justice Court dismissed both cases without prejudice, concluding that the case would be a waste of taxpayers' resources and time because the trial was pending based on the simple fact that the Burts refused to sign an admission of guilt. The County appealed to the Twenty-First Judicial District Court. The Burts moved to dismiss because there was no basis for the criminal charges and the prosecution was vindictive. The District Court dismissed the criminal charges with prejudice because the parties had resolved their dispute, and there was no legal basis for the County to pursue criminal charges. The court held also that the parties had entered into an enforceable settlement agreement, and it ordered the parties to reduce the agreement to writing and execute it.

¶6 The Burts filed a Motion to Alter or Amend Judgment based on Montana Rules of Civil Procedure 52(b) and 59(e). The Burts argued that the prosecution was vindictive, that the District Court should order the settlement agreement rescinded, and for an award of equitable damages for the rescission of the agreement, including attorney fees. After the County responded, the District Court issued a second opinion. The court held that the rules of civil procedure did not apply to the case. It ruled, however, that “in light of new information” and its belief that the first opinion would “lead to manifest injustice,” it would consider the Burts’ motion on the merits. The court: (1) vacated the prior dismissal and its prior order that the parties reduce the settlement to writing; (2) rescinded the settlement agreement between the parties; (3) awarded the Burts costs and attorney fees, subject to offset by the \$8,400 fine the Burts originally had agreed to pay; and (4) stayed the criminal proceedings pending the County’s payment to the Burts, after which “all criminal charges against [the Burts] will be ordered dismissed with prejudice.”

¶7 Ravalli County and the Ravalli County Board of Health appeal the District Court’s second opinion. The County argues that the District Court did not have authority to vacate or amend its first order of dismissal. The County argues further that the District Court erred in awarding contract damages and attorney fees to the defendant in a criminal case. The County requests this Court to vacate the second opinion and affirm the first opinion.

¶8 The Burts cross-appeal, arguing that although the District Court properly awarded attorney fees, it erred in offsetting the award by the \$8,400 fine. The Burts argue further

that the District Court properly dismissed the criminal charges but erred in finding no vindictive prosecution.

¶9 No party to this appeal has appealed the dismissal of the criminal charges.

¶10 Criminal proceedings are governed by statute. *Cf. State v. Brendal*, 2009 MT 236, ¶ 11, 351 Mont. 395, 213 P.3d 448 (holding “criminal sentencing alternatives are strictly a matter of statute” (internal citations omitted)). The rules of criminal procedure set forth in Title 46, MCA, not the rules of civil procedure, apply to criminal cases. *See State v. Jeffries*, 2018 MT 17, ¶ 25, 390 Mont. 189, 410 P.3d 972. Section 46-13-402, MCA, establishes the effect of an order to dismiss in a criminal case. An order of dismissal “with prejudice” in a criminal case “acts as a final adjudication of the case and is as conclusive of the rights of the parties as is a final judgment.” *State ex rel. Torres v. Eighth Judicial Dist. Court*, 265 Mont. 445, 455, 877 P.2d 1008, 1012 (1994). A dismissed information is no longer effective against a defendant. *State v. Onstad*, 234 Mont. 487, 490, 764 P.2d 473, 475 (1988). When the trial court dismisses an information with prejudice, § 46-13-402, MCA, does not provide for reconsideration of the decision, and the trial court is without jurisdiction to reinstate the charges. *State ex rel. Torres*, 265 Mont. at 453, 877 P.2d at 10132 (citing § 46-13-402, MCA). Although a district court may correct clerical errors, after a dismissal the court may not change what it originally intended. *State ex rel. Torres*, 265 Mont. at 453, 877 P.2d at 1012.

¶11 After the District Court dismissed all criminal charges against the Burts, there was no longer a case or controversy before the court. The complaint was no longer effective

against the Burts. Neither party cites authority that allows a district court to order civil remedies in a criminal case that are not expressly provided by statute.¹ The District Court also lacked authority to vacate its dismissal of the charges in its second order, which essentially reinstated them. Although the court indicated that the charges again would be dismissed after the County paid the Burts' attorney fees, the statutes did not authorize the court to reinstate the charges in response to a motion to alter or amend the judgment. The District Court had no authority in this criminal case to order the parties to reduce a settlement agreement to writing, to reverse the dismissal, or to award civil remedies.

¶12 The Burts obviously do not contest the dismissal of the charges, but they argue that the dismissal should have been based on vindictive prosecution. The proper remedy for prosecutorial vindictiveness is dismissal of the charges. *See State v. Ridge*, 2014 MT 288, ¶ 13, 376 Mont. 534, 337 P.3d 80 (holding that dismissal based upon a violation of due process would be proper if the court found prosecutorial vindictiveness). All charges against the Burts have been dismissed, rendering this issue moot. The Burts' argument seeks an advisory opinion. Judicial power is limited to justiciable controversies, and we will not render advisory opinions. *Arnone v. City of Bozeman*, 2016 MT 184, ¶ 7, 384 Mont. 250, 376 P.3d 786.

¶13 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents

¹ The Burts' argument that the District Court's order provided "the contractual equivalent of restitution" does not advance their position. Restitution is expressly required by Title 46 (§ 46-18-241, MCA); contractual remedies are not.

no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent. The District Court's interpretation and application of the law were incorrect. We reverse and remand for further proceedings consistent with this opinion.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ INGRID GUSTAFSON
/S/ LAURIE McKINNON