

DA 19-0058

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 148N

KRISTEN TUTTLE,

Plaintiff and Appellee,

v.

SCOTT LEE BENEDICT,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. BDV-17-0051
Honorable Elizabeth Best, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Scott Lee Benedict, Self-Represented, Deer Lodge, Montana

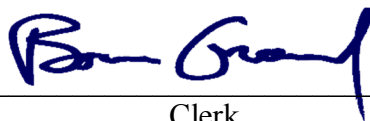
For Appellee:

Molly K. Howard, Jenna Lyons, Datsopoulos, MacDonald & Lind, P.C.,
Missoula, Montana

Submitted on Briefs: May 22, 2019

Decided: July 2, 2019

Filed:



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 Scott Lee Benedict appeals from an order of the Eighth Judicial District Court, Cascade County, entering judgment against Benedict and awarding Kristen Tuttle \$800,000 in damages. We affirm.

¶3 In March 2017, the Honorable Elizabeth A. Best sentenced Benedict to incarceration for 30 years in the Montana State Prison with fifteen years suspended for the crime of incest. Kristen Tuttle was Benedict's victim. Separate from the criminal proceedings, Tuttle filed an initial complaint against Benedict on January 19, 2017. Tuttle claimed Benedict negligently and intentionally inflicted emotional distress on her. She sought compensatory and punitive damages. Judge Best also presided over Tuttle's civil matter. Tuttle alleged Benedict, her stepfather, regularly sexually abused her throughout her childhood. The complaint further alleged that in 2015, Tuttle discovered Benedict took surreptitious pictures and recordings of her while she was in a state of undress. Tuttle later discovered Benedict stored other sexually explicit recordings and photographs of her on his computer and mobile device.

¶4 Tuttle served Benedict with her amended complaint, summons, and discovery requests on June 8, 2017. On November 6, 2017, after Benedict failed to respond in any manner, Tuttle filed a request for an entry of default and a hearing to determine recoverable damages, which she subsequently served on him. At Tuttle's request, Judge Best set a hearing for April 20, 2018. Prior to the hearing Tuttle deposed Dr. William Stratford. Benedict failed to answer Tuttle's complaints and he did not personally appear in court or otherwise respond to Tuttle's allegations until the April 2018 hearing.

¶5 During the hearing, Tuttle placed Dr. Stratford's deposition into evidence. Dr. Stratford testified that Benedict inflicted serious injuries on Tuttle and stated the treatment plan he recommended for her recovery. Dr. Stratford further testified to a reasonable degree of medical certainty that, due to the nature of Tuttle's psychological and emotional harm, she would need a lifetime of psychological and psychiatric treatment, including inpatient treatment, without which the likelihood that she would be able to conduct a productive life was "abysmal." Tuttle testified the projected cost of Dr. Stratford's recommended treatment would put her in a state of financial hardship, delay her professional development, and cause her to lose future income. Tuttle also testified to the nature and severity of Benedict's abuse and to the progression and escalation of her symptoms following the abuse. She acknowledged she needed treatment, but stated she was unable to afford it because she lacked insurance coverage. Tuttle requested compensatory damages of \$800,000 that would help her receive the treatment she needed and compensate her for future lost wages.

¶6 Benedict objected to Tuttle’s requested amount during his testimony and offered to pay Tuttle \$50,000 instead. He stated Tuttle’s request was too much and he could not pay. The District Court found Tuttle’s testimony credible and the specific items of damages (the cost of treatment and loss of future earnings and opportunities) just and reasonable, supported by the testimony, and likely conservative. The Court entered a damages award in favor of Tuttle for \$800,000. Benedict appeals.

¶7 Benedict raises three issues on appeal that we address in turn. Benedict first argues Judge Best should have disqualified herself pursuant to M. C. Jud. Cond. 2.12(A)(5)(d) because she presided over a criminal matter and a civil matter arising from the same set of underlying facts. Without more, presiding over a civil and criminal matter arising from the same facts is not an automatic ground for disqualification. Nonetheless, if a party has an objection based on perceived bias of the court, the party may file a motion for disqualification pursuant to § 3-1-804, MCA. Generally, an appellant may only raise the issue of disqualification on appeal if he first raised the issue in the lower court. Through § 3-1-804, MCA, each adverse party is entitled to one substitution of a district judge in most civil actions, so long as the party seeking substitution files a motion for substitution within thirty calendar days “after the first summons is served or an adverse party has appeared.” Additionally, § 3-1-805, MCA, sets forth procedural steps permitting a party to disqualify a judge for cause. Benedict failed to timely make either motion and has not presented any circumstances which would warrant our consideration of this issue. Accordingly, we will not consider the issue of Judge Best’s disqualification on appeal.

¶8 Second, Benedict argues the amount of civil damages (\$800,000) violates his Eighth Amendment right against the imposition of excessive fines afforded by the U.S. Constitution. The United States Supreme Court has previously held the Excessive Fines Clause of the Eighth Amendment does not apply to awards of punitive damages in cases between private parties. *Browning-Ferris Indus. v. Kelco Disposal*, 492 U.S. 257, 260, 109 S. Ct. 2909, 2912 (1989). Further, the Court explained “the primary focus of the Eighth Amendment was the potential for governmental abuse of its ‘prosecutorial’ power, not concern with the extent or purposes of civil damages.” *Browning-Ferris*, 492 U.S. at 266, 109 S. Ct. at 2915. The Eighth Amendment protections are only implicated in instances of governmental abuse of its prosecutorial power and accordingly, does not apply to cases between private parties, as here.

¶9 This particular matter is a civil action in which Tuttle seeks damages for Benedict’s sexual abuse; the \$800,000 awarded to Tuttle is neither a civil fine, forfeiture, nor any other form of a criminal sanction. *See Hudson v. United States*, 522 U.S. 93, 103, 118 S. Ct. 488, 495 (1997) (“The Eighth Amendment protects against excessive civil fines, including forfeitures.”); *Browning-Ferris*, 492 U.S. at 262, 109 S. Ct. at 2913 (1989) (“[O]ur cases long have understood [the Eighth Amendment] to apply primarily . . . to criminal prosecutions and punishments.”). The judgment issued against Benedict orders him to directly pay the damages to Tuttle to compensate her for the harms he inflicted upon her. No governmental entity has any stake in the award, and the award is not a fine.

Accordingly, the award of damages has not implicated Benedict's Eighth Amendment protection against excessive fines.

¶10 This Court reviews a district court's award of damages for abuse of discretion. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 13, 339 Mont. 503, 172 P.3d 94. We will not disturb a lower court's award of damages unless the award is "so grossly out of proportion to the injury as to shock the conscience." *Harding v. Savoy*, 2004 MT 280, ¶ 45, 323 Mont. 261, 100 P.3d 976. In a civil action arising from the same facts as a criminal case, the victim must prove recoverability and substantiate pecuniary losses. *State v. Johnson*, 2018 MT 277, ¶ 28, 393 Mont. 320, 430 P.3d 494. Further, an award calculation need not be mathematically precise, but substantial evidence must support the calculation. *See In re Marriage of Mease*, 2004 MT 59, ¶ 42, 320 Mont. 229, 92 P.3d 1148. "Proof of damages must consist of a reasonable basis for computation and the best evidence obtainable under the circumstances which will enable a judge to arrive at a reasonably close estimate of the loss." *In re Marriage of Mease*, ¶ 42; *accord Tractor & Equip. Co. v. Zerbe Bros.*, 2008 MT 449, ¶ 27, 348 Mont. 30, 199 P.3d 222.

¶11 During the April 2018 hearing, Tuttle testified about her loss of future wages and the cost and necessity of the intensive treatment Dr. Stratford recommended for her. Dr. Stratford stated, to a reasonable degree of medical certainty that the severity of Tuttle's symptoms is a result of "the psychological and emotional harm caused by Benedict." Dr. Stratford further testified Tuttle "would need a lifetime of psychological and psychiatric treatment." The District Court found the testimony of both Tuttle and

Dr. Stratford to be credible and reflective of the deep and likely permanent harm Benedict caused Tuttle. It also found Tuttle's requested damages were just and reasonable; findings to which this Court defers. We conclude the award of damages is not so grossly out of proportion with Tuttle's injury as to shock the conscience. We also conclude the evidence substantially supports the award. The District Court did not abuse its discretion.

¶12 The final issue Benedict raises on appeal is whether the statute of limitations expired before Tuttle brought her civil action. We review a district court's application of the statute of limitations to determine whether it was correct. *Gulf Ins. Co. v. Clark*, 2001 MT 45, ¶ 13, 304 Mont. 264, 20 P.3d 780; *Grant Creek Heights, Inc. v. Missoula Cnty.*, 2012 MT 177, ¶ 13, 366 Mont. 44, 285 P.3d 1046.

¶13 The statute of limitations is one of the affirmative defenses set forth in M. R. Civ. P. 8(c). A defendant waives it if he fails to affirmatively plead it at the case's outset. *Estabrook v. Baden*, 284 Mont. 419, 421, 943 P.2d 1334, 1336 (1997). In *Estabrook*, we explained that devoid any reason to excuse a defendant from filing an answer to a complaint, if a defendant fails to appear or fails to raise the statute of limitations as a defense, he waives the defense. *Estabrook*, 284 Mont. at 423, 943 P.2d at 1337.

¶14 Tuttle properly served upon Benedict the court's summons with her original complaint, filed on January 19, 2017, and her amended complaint, filed on May 30, 2017. Benedict was required to file a response to the amended complaint within twenty-one days of receiving the summons. Benedict failed to raise the statute of limitations issue—in fact,

he failed to respond to Tuttle's complaints at all. Consequently, he waived any statute of limitations defense pursuant to M. R. Civ. P. 8(c).

¶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. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶16 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ DIRK M. SANDEFUR

/S/ JIM RICE

/S/ INGRID GUSTAFSON