

DA 19-0144

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 225N

LIANE TAYLOR,

Plaintiff and Appellee,

v.

MICHAEL FASBENDER,

Defendant and Appellant

APPEAL FROM: District Court of the Fifth Judicial District,
In and For the County of Jefferson, Cause No. DV-2017-63
Honorable Luke Berger, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Michael J. Fasbender, Self-represented, Helena, Montana


For Appellee:

James E. Brown, Rose M. Scheid, The James Brown Law Office, PLLC,
Helena, Montana

Submitted on Briefs: August 21, 2019

Decided: September 17, 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 Appellant, Michael Fasbender (Fasbender), appeals from the Order on Motion for Partial Summary Judgment granting Appellee, Liane Taylor (Taylor), judgment on Fasbender's counterclaim for breach of contract issued by the Fifth Judicial District Court, Jefferson County, on November 15, 2018. We affirm.

¶3 Taylor and Fasbender were married in October 2013 and divorced in June 2014. The Final Decree of Dissolution, to which the parties stipulated, specifically states there were no marital debts. Fasbender did not appeal this Decree. Also in June 2014, the parties entered into a separate agreement to dispose of other liabilities and assets outside the context of the dissolution. This agreement provided for two mining claims in Taylor's name and a home owned jointly between Taylor, Fasbender, and Fasbender's brother, Dustin, to be sold and the proceeds split among the parties as later negotiated between them. In October 2015, Taylor commenced a separate civil action in Lewis and Clark County against Fasbender and Dustin, asserting a variety of claims for failing to pay her proceeds from the sale of property they all owned jointly. In response, Fasbender asserted a breach of contract counterclaim against Taylor for \$16,000 he allegedly loaned her in 2013 related to an IRS obligation. Taylor sought summary judgment on this claim asserting

Fasbender's counterclaim had already been resolved in the parties' dissolution action. The District Court agreed finding, "By operation of Mont. Code Ann. § 40-4-253(4), the \$16,000 debt [Fasbender] asserts [Taylor] owes him existed at the time of the dissolution and cannot be litigated here because [Fasbender] failed to disclose it prior to entry of the dissolution decree." The District Court further noted the parties' separate agreement disposing of other liabilities and assets outside the context of the dissolution did not mention the alleged \$16,000 liability. Finally, the District Court determined that although it had jurisdiction to reopen the dissolution pursuant to Rule 60, it would not do so as no appeal was made regarding the decree of dissolution and attempts to relitigate issues contained in the decree after it became final were barred by res judicata.

¶4 We review a district court's grant or denial of summary judgment de novo, applying the criteria of M. R. Civ. P. 56. *McClue v. Safeco Ins. Co.*, 2015 MT 222, ¶ 8, 380 Mont. 204, 354 P.3d 604. We review for clear error a district court's findings of fact. *In re Marriage of Whyte*, 2012 MT 45, ¶ 14, 364 Mont. 219, 272 P.3d 102. We review a district court's conclusions of law to determine if they are correct. *Tubaugh v. Jackson (In re Parenting of C.J.)*, 2016 MT 93, ¶ 12, 383 Mont. 197, 369 P.3d 1028.

¶5 Fasbender asserts the \$16,000 loan was an undisputed premarital loan which was not disclosed as the parties waived disclosure. Taylor asserts there were no outstanding obligations between the parties at the time of dissolution and, other than claims arising from the property referenced in their separate agreement, any claim of an outstanding debt obligation was required to be litigated in the dissolution.

¶6 In their dissolution, the parties filed a Final Declaration of Disclosure of Assets, Debts, Income, and Expenses which did not disclose the existence of any outstanding liability between the parties.¹ The parties' separate agreement disposing of assets outside their divorce agreement did not disclose the existence of any outstanding liability between the parties. The Decree of Dissolution—which Fasbender did not appeal—affirmatively states in two places there are no marital debts.² From our review of the record, the District Court's findings of fact are supported by the record and its conclusions of law were correct. Fasbender's counterclaim in the litigation at issue here is an attempt to relitigate issues contained in the decree of dissolution after it became final. We agree with the District Court that Fasbender's counterclaim is barred by res judicata.

¶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.

¶8 Affirmed.

/S/ INGRID GUSTAFSON

¹ Fasbender asserts the disclosure of assets and debts in the dissolution was waived by the attachment of Exhibit A to the Final Declaration of Disclosure of Assets, Debts, Income, and Expenses. The Final Declaration of Disclosure did not reference the existence of the asserted \$16,000 loan.

² A debt obligation owing from one spouse to the other existing at the time of dissolution is reasonably considered a marital debt and subject to equitable division in the parties' dissolution action as provided in § 40-4-202, MCA.

We concur:

/S/ MIKE McGRATH

/S/ DIRK M. SANDEFUR

/S/ BETH BAKER

/S/ JIM RICE