

DA 19-0335

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 54N

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IN RE THE MARRIAGE OF:

SHARON McDONALD,

Petitioner and Appellee,

and

DENNIS McDONALD,

Respondent and Appellant.

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APPEAL FROM: District Court of the Sixth Judicial District,  
In and For the County of Sweet Grass, Cause No. DR 14-12  
Honorable Brenda R. Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

David B. Gallik, Gallik Law Office, PLLC, Helena, Montana

Hertha L. Lund, Lund Law, PLLC, Bozeman, Montana

For Appellee:

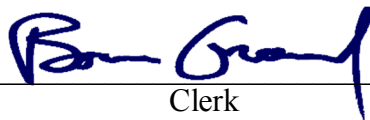
James B. Lippert, Jim Lippert Attorney at Law, P.C., Big Timber, Montana

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Submitted on Briefs: January 29, 2020

Decided: March 3, 2020

Filed:

  
Clerk

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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 Respondent and Appellant Dennis McDonald (Dennis) appeals from the Court's Findings of Fact[,] Conclusions of Law[,] and Order Regarding Date of Marriage issued on May 20, 2019, by the Sixth Judicial District Court, Sweet Grass County, denying Dennis's Motion to Amend the Decree of Dissolution as to the date of the parties' marriage. We affirm.

¶3 After residing with Petitioner and Appellee Sharon McDonald (Sharon) for over 40 years, having and raising four children together, comingling their assets and finances, owning real property together, filing joint tax returns, consistently holding themselves out as a married couple since May 1, 1977, and celebrating their wedding anniversary annually on May 1st thereafter, Dennis desires this Court ignore the overwhelming evidence supporting the District Court's findings concluding the parties' marriage commenced May 1, 1977. Dennis asserts we should conclude the District Court erred in finding Dennis and Sharon entered into a common law marriage on May 1, 1977, while they resided in California and instead conclude they were not married until they moved to Montana in approximately 1989. Given § 40-1-403, MCA, and our holdings in *In re Estate of Murnion*,

212 Mont. 107, 686 P.2d 893 (1984) and *In re Marriage of Swanner-Renner*, 2009 MT 186, 351 Mont. 62, 209 P.3d 238, we find this argument entirely without merit.

¶4 From our review of the record, we conclude the District Court's findings of fact are supported by not only substantial but overwhelming evidence, its conclusions of law are correct, and it correctly applied the facts to the law when it held Dennis and Sharon were married on May 1, 1977.

¶5 Dennis also contends the District Court erred in converting a scheduling hearing on his Motion to Amend Decree to an evidentiary hearing and in not enforcing against Sharon a representation previously made by her counsel that the date of marriage in the Decree would be changed. We find these assertions equally meritless. From the outset of this cause, Dennis contested the validity of the marriage, denied that a marriage existed and asserted if any marriage occurred, it could not have occurred prior to the parties moving to Montana in the late 1980s. Pursuant to the District Court's Domestic Relations Scheduling Order from 2015, Dennis had full opportunity to conduct discovery regarding this issue or any other issues involved in the case. Fifteen months after discovery closed, Dennis and Sharon entered into a Settlement Agreement which did not provide for any specific date of marriage. Thereafter, Sharon's counsel, under a mistake of law, believed that a common law marriage initiated outside Montana would not be deemed a common law marriage until the date the parties moved to Montana. As such, Sharon's counsel represented to Dennis's counsel he would change the date of marriage in the proposed Decree to 1989. Before doing so, he determined through additional legal research that under Montana law, a

common law marriage initiated outside Montana is recognized by Montana at the time the marriage was initiated outside Montana and thus did not change the date of marriage in the proposed Decree he submitted to the court.

¶6 From our review of the record, it is clear the District Court well understood the parties' dispute as to the marriage validity and the date of the marriage as well as the mistake of law made by Sharon's counsel prior to submitting the proposed Decree to the court. Dennis was not prejudiced by the District Court conducting a hearing, rather than merely oral argument, on his motion to amend the decree. Further, binding Sharon to her counsel's mistake of law is inappropriate given the known dispute between the parties throughout the case as to both the validity of the marriage and the date of marriage. The District Court properly resolved this issue by holding a hearing, considering the evidence, and rendering findings and conclusions thereon. Dennis was not prejudiced as he had full opportunity at the evidentiary hearing to present evidence in support of his asserted date of marriage.

¶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

We concur:

/S/ LAURIE McKINNON

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ JIM RICE