

DA 19-0438

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 32N

JERRAD JUSTIN SONGER,
d/b/a JRD CONTRACTING,

Plaintiff and Appellant,

v.

MICHAEL TIMOTHY HARTNETT, d/b/a
MONTANA UNDERGROUND CONSTRUCTION, INC.,

Defendant and Appellee.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. BDV-2019-384
Honorable Michael F. McMahon, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Susan J. Rebeck, Attorney at Law, Helena, Montana

For Appellee:

Cherche Prezeau, Kate McGrath Ellis, Christensen & Prezeau, PLLP,
Helena, Montana

Submitted on Briefs: January 22, 2020

Decided: February 4, 2020

Filed:


Clerk

Chief Justice Mike McGrath 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 Jerrad Songer appeals a First Judicial District Court order affirming the Justice Court's grant of Michael Hartnett's motion for summary judgment. We affirm.

¶3 In 2015, Songer left a paint striper in Hartnett's garage and made no effort to retrieve it for three years. In April 2018, Songer filed a claim in Small Claims Court alleging Hartnett stole the striper. The case was removed to Justice Court. Following trial, the court ordered the striper be returned. Hartnett made repeated unsuccessful attempts to do so. Hartnett also sought a temporary restraining order ("TRO") against Songer due to threats to Hartnett during these attempts. At the TRO hearing, the Justice Court ordered Hartnett to return the striper to Songer that day, which he did. Songer then filed a separate suit in Small Claims Court, claiming the striper was not operational upon its return. After removal to Justice Court, Hartnett filed a motion for summary judgment, arguing Songer waived his right to contest the striper's condition. The Justice Court granted the motion and the District Court affirmed. Songer appeals.

¶4 Issues on appeal from district court that were originally filed in a justice court of record are reviewed independently, as if appealed directly to this Court. *Alto Jake*

Holdings, LLC v. Donham, 2017 MT 297, ¶ 14, 389 Mont. 435, 406 P.3d 937. Appeals from summary judgment are reviewed de novo. *Thornton v. Alpine Home Ctr.*, 2001 MT 310, ¶ 10, 307 Mont. 529, 38 P.3d 855.

¶5 Songer argues summary judgment was improper because intent to waive is a genuine issue of material fact.¹ Waiver is a voluntary and intentional relinquishment of a known right. *Farmer's Elevator Co. v. Anderson*, 170 Mont. 175, 180, 552 P.2d 63, 65 (1976). Waiver may be implied by a party's conduct, inducing detrimental reliance by another party. *Benson v. Diverse Computer Corp.*, 2004 MT 114, ¶ 30, 321 Mont. 140, 89 P.3d 981. Songer abandoned the striper for years and ignored ample opportunities to inspect it at Hartnett's expense. The District Court correctly affirmed the Justice Court decision.

¶6 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.

¶7 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ JIM RICE

/S/ BETH BAKER

/S/ INGRID GUSTAFSON

¹ Songer raises two additional arguments for the first time on appeal which are, therefore, barred. *See State v. Whalen*, 2013 MT 26, ¶ 37, 368 Mont. 354, 295 P.3d 1055.