

DA 21-0520

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 136N

IN RE THE MARRIAGE OF:

SCOTT A. ST. CLAIR,

Petitioner and Appellee,

and

CLARICE J. ST. CLAIR,

Respondent and Appellant.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. ADR-2007-0062
Honorable Mike Menahan, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

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

For Appellee:

Michelle H. Vanisko, Hinshaw & Vanisko, PLLC, Helena, Montana

Submitted on Briefs: June 15, 2022

Decided: July 5, 2022

Filed:


Clerk

Justice James Jeremiah Shea 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, 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 Clarice St. Clair appeals the September 3, 2021 Order of the First Judicial District Court, Lewis and Clark County, denying her M. R. Civ. P. 60 motion to amend a family law order equitably dividing her Montana Public Employees' Retirement System (PERS) benefit with her ex-husband. We affirm.

¶3 Clarice and Scott St. Clair were married on August 26, 1978, and separated on February 9, 2007. Scott filed a petition to dissolve the marriage on February 21, 2007. In September 2007, Clarice inquired with the Montana Public Employee Retirement Administration (MPERA) as to what her monthly retirement benefit would have been had she retired on February 1, 2007, and chosen "Option 1." The District Court issued its Findings of Fact, Conclusions of Law, and Decree of Dissolution on April 3, 2008. Relevant to this dispute, Finding No. 29 provided:

Clarice is an employee of the State of Montana and remains employed. When she qualified for retirement, she will receive \$242.83 per month. Clarice's employment was during the marriage and, therefore, Scott should equally share in the value as of the date of the parties' separation on February 9, 2007, pursuant to a Qualified Domestic Relations Order [QDRO].

The court adopted Clarice's proposed amended QDRO on September 25, 2008, including the following provision regarding her retirement benefits:

Effective April 2, 2008[,] the Court awarded and assigned as the sole and separate property of [Scott] one-half of [Clarice's] retirement account balance as of February 9, 2007. The PERS Board of Pensions will segregate, transfer, and maintain the benefits assigned to [Scott] as a separate account in [Scott's] name. Subsequent interest, earnings, gains, or losses on this balance will be credited and paid to [Scott].

¶4 On April 8, 2009, legal counsel for the MPERA wrote a letter to the District Court advising the court and both parties that the Board could not approve the QDRO as written because, under § 19-2-907, MCA, “[t]he Board can not maintain accounts for individuals who are not members of the retirement system and can not release funds prior to the retirement system member terminating, retiring or dying.”

¶5 In response to the MPERA legal counsel's letter, the District Court entered a Family Law Order on July 27, 2009, applying the “time-rule method” to equitably divide Clarice's retirement account, as set forth by this Court in *Rolfe v. Rolfe*, 234 Mont. 294, 298, 766 P.2d 223, 226 (1988). The order specified that, if Clarice withdraws accumulated contributions or receives a service or disability retirement benefit from her PERS account during her lifetime, Scott is entitled to receive a portion of the benefit “to be calculated as follows: 50% times 134.32 months (number of months of marriage during which [Clarice] contributed to the retirement system) divided by [either] the number of months of service credit at the time of withdrawal [of the contributions],” or the number of months of service credit used to calculate the benefit. The Board approved the order and sent a confirmation letter with the effective date of its decision to the court and the parties on September 1, 2009.

¶6 On October 30, 2020, Clarice filed a motion to amend the District Court’s July 27, 2009 Family Law Order pursuant to M. R. Civ. P. 60(a) and (b)(1), asking the District Court to “enter an amended Family Law Order that properly follows the Court’s Finding of Fact #29, that Scott St. Clair shall receive a monthly payment of \$121.42 from Ms. St. Clair’s MPERA retirement, when she commences her retirement.” Scott opposed Clarice’s motion both on the merits and on the basis that it was time-barred. On September 3, 2021, after a hearing on the merits, the District Court entered its order denying Clarice’s motion to amend, holding that “[b]ecause no one could predict the date of Clarice’s retirement, [the *Rolfe* formula] was an equitable method to determine the percentage payable to Scott,” and the Family Law Order, which sought “to equitably divide Clarice’s retirement benefit between the parties[,] . . . is consistent with the Decree.”

¶7 We review a district court’s rulings under M. R. Civ. P. 60(a) and (b)(1) for an abuse of discretion. *Funke v. Estate of Shultz*, 2009 MT 411, ¶ 6, 353 Mont. 492, 223 P.3d 839; *In re Marriage of Remitz*, 2018 MT 298, ¶ 8, 393 Mont. 423, 431 P.3d 338. A district court abuses its discretion when it acts arbitrarily without employment of conscientious judgment or exceeds the bounds of reason resulting in substantial injustice. *Essex Ins. Co. v. Moose’s Saloon, Inc.*, 2007 MT 202, ¶ 19, 338 Mont. 423, 166 P.3d 451.

¶8 Clarice argues that the Family Law Order, as drafted and approved, fails to “implement the intent of the division set forth in the Findings of Fact, Conclusions of Law and Decree of Dissolution of Marriage.” Scott responds that the District Court correctly decided the matter on its merits but again argues on appeal that Clarice’s motion was time-barred. Although the District Court resolved Clarice’s motion on its merits, we need

not address the merits of the motion because as Scott correctly argued to the District Court and on appeal, Clarice’s motion is time-barred.

¶9 Rule 60(a) provides that “[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” Rule 60(b)(1) provides, “the court may relieve a party . . . from a final judgment, order or proceeding” due to “mistake, inadvertence, surprise, or excusable neglect.” While clerical errors in a judgment, falling under Rule 60(a), may be corrected at any time, judicial errors affecting the substantial rights of the parties are subject to time limitations. *Thomas v. Thomas*, 189 Mont. 547, 550, 617 P.2d 133, 135 (1980). Motions under Rule 60(b)(1) must be made “no more than a year after the entry of the judgment or order or the date of the proceeding.” M. R. Civ. P. 60(c)(1).

¶10 Clarice’s motion to amend the Family Law Order amounts to an assertion of judicial error under Rule 60(b)(1), not a mere clerical mistake under Rule 60(a). The whole basis for Clarice’s motion is that the Family Law Order substantively changed the distribution of her PERS benefit. The District Court entered the Family Law Order on July 27, 2009, and the notice of acceptance from the Montana Public Employees’ Retirement Board was entered on September 14, 2009. Clarice’s October 30, 2020 Rule 60(b)(1) motion to amend the Family Law Order was well beyond the one year time limit.

¶11 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. The District Court's decision to deny Clarice's Motion to Amend the July 24, 2009 Family Law Order is affirmed.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ MIKE McGRATH

/S/ LAURIE McKINNON

/S/ DIRK M. SANDEFUR

/S/ JIM RICE