

DA 23-0031

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 246N

IN THE MATTER OF THE ESTATE OF:

IAN RAY ELLIOT,

Deceased.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DP 22-34
Honorable Rod Souza, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jenny Jing, Self-Represented, Kearny, New Jersey

Alice Carpenter, Self-Represented, Billings, Montana

Mike Bolenbaugh, Self-Represented, Billings, Montana

For Appellee Joseph V. Womack:

Michael P. Manning, Ritchie Manning Kautz PLLP, Billings, Montana

For Appellee Cindy Elliot:

Jeffery A. Hunnes, Joseph Soueidi, Felt Martin PC, Billings, Montana

Submitted on Briefs: October 25, 2023

Decided: December 19, 2023

Filed:


Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, we decide this case by memorandum opinion. It 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 Appellants Jenny Jing, Alice Carpenter, and Mike Bolenbaugh (collectively referred to as “Jing”) challenge numerous rulings of the Thirteenth Judicial District Court related to administration of the estate of Ian Ray Elliot. Limiting our consideration to the District Court’s December 9, 2022 order denying Jing’s M. R. Civ. P. 60 motion, we affirm on all issues.

¶3 Ian was the son of Ada Elliot, whose estate—and before that, her guardianship—has been the subject of numerous prior appeals and petitions before this Court.¹ Ada died in 2017, devising her property by will in equal shares to Ian and his sister Cindy and appointing them as her co-personal representatives. Ada’s estate consisted primarily of her 96.34% interest in StarFire, a limited partnership that owned and managed valuable real properties in Gallatin County. *In re Estate of Elliot*, No. DA 21-0343, 2022 MT 91N, ¶ 3, 2022 Mont. LEXIS 447 (*Estate of Elliot II*). Ian, who litigated his mother’s estate

¹.See *In the Matter of the Estate of A.H.E.*, No. DA 16-0304, 2016 MT 315N, 2016 Mont. LEXIS 1002; *In the Matter of the Estate of Ada Elliot*, No. DA 17-0618, 2018 MT 171N, 2018 Mont. LEXIS 231; *Elliot v. Womack*, No. OP 21-0473, 405 Mont. 540, 495 P.3d 420 (Sept. 21, 2021); *In re Estate of Elliot*, No. DA 21-0343, 2022 MT 91N, 2022 Mont. LEXIS 447; and *Jing, et al. v. Mont. Thirteenth Jud. Dist. Ct.*, No. OP 23-0642, Order denying writ (Nov. 7, 2023).

extensively, died in December 2021, during the pendency of his last appeal. *Estate of Elliot II*, ¶ 2 n.1. Appellant Jenny Jing was Ian’s domestic partner and had longstanding involvement with his litigation. The probate of Ada’s estate has not yet concluded.

¶4 Ian left a will appointing Jenny and Ian’s ex-wife Ann Taylor Sargent co-personal representatives of his estate. Appellants Alice Carpenter and Mike Bolenbaugh were named in Ian’s will as devisees. The present litigation was commenced a month after Ian’s death when Joseph Womack, special administrator for Ada’s estate, filed a petition for supervised administration of Ian’s estate and requested the court to appoint Ian’s nephew, Adrian Elliot Olson, as personal representative. Womack’s petition represented that he had been unable to obtain a signed copy of Ian’s purported will and believed he may have died intestate. Cindy simultaneously renounced any right she had to be appointed personal representative. Jenny and Ann filed a response and application for probate of Ian’s will, along with their petition to be appointed as personal representatives as the will directed. Jenny and Ann submitted a copy of Ian’s signed will with their application. Cindy followed with an objection to Jenny and Ann’s request to be appointed as personal representatives and her own application for supervised administration.

¶5 On May 25, 2022, following numerous additional filings and an evidentiary hearing that extended over two days, the District Court entered detailed findings of fact, conclusions of law, and an order for supervised administration of Ian’s estate. In relevant part, the court found that, due to Jenny’s involvement with Ian’s decisions and questionable litigation tactics for years, she “will pick up where Ian left off” if Jenny were to serve as

co-personal representative. The court found further that Jenny would not work with Womack. Instead, the court found, “Jenny will pursue litigation to the detriment of Ian’s estate and the Estate of Ada Elliot. Such actions will cascade to needlessly delay closure and squander Ian’s Estate’s remaining assets.” The District Court found further, in relevant part:

Womack is not only the Special Administrator of Ada’s Estate but also StarFire’s liquidating partner. The major asset of Ada’s Estate is land still owned by StarFire. Thus, whether it is a special administrator or a personal representative handling Ian’s estate, that person must work with Womack. Jenny is incapable of doing so.

Moreover, if the Court appointed Jenny as co-personal representative, she would have a conflict of interest due to financial records indicating Ian lent Jenny and her entity (Win Win Star) a substantial amount of money. The conflict arises because Jenny disclaims the full amount of the debt. During testimony, Jenny acknowledged Ian probably put between \$20,000 and \$30,000 into her home. However, when questioned about Ian transferring \$21,000 to Jenny during the last year of his life, Jenny denied the scope of the transfers. She stated transfers probably totaled \$2,000. Ian’s financial records admitted as evidence demonstrate Jenny vastly underestimated the total amount of these transfers—hence a conflict of interest arises.

Acting under the authority of § 72-3-701(2), MCA, the court concluded that appointing a special administrator “is necessary to preserve [Ian’s] estate or to secure its proper administration.” The court appointed attorney Andrew Billstein as special administrator. Jing did not appeal this order.

¶6 More than three months after Notice of Entry of the District Court’s Order was filed, Jing filed a motion under M. R. Civ. P. 42 and 60, requesting the District Court to (1) vacate its May 25, 2022 order, (2) allow them to institute an independent action to investigate fraud on the court, and (3) consolidate three pending cases related to Ada’s and Ian’s estates

involving common questions of law and fact.² On December 9, 2022, the court denied Jing’s motion in a thorough order. Jing filed a notice of appeal on January 9, 2023, purporting to appeal the May 25 order. On March 7, 2023, this Court granted Womack’s partial motion to dismiss the appeal, noting that an order granting or refusing to grant letters of administration of an estate is considered a final order and must, pursuant to M. R. App. 6(4)(b), be appealed immediately. We ruled that “Appellants’ attempt to appeal from the May 23, 2022 Order [sic] is untimely and, as provided by the Rules, their right to appeal that order was waived.”³ We directed that Jing’s appeal be limited to the District Court’s denial of their Rule 60 motion on the three issues identified above.

¶7 We now consider those three issues, reviewing the District Court’s denial of Jing’s Rule 60(b) motion for abuse of discretion. *See Puhto v. Smith Funeral Chapels, Inc.*, 2011 MT 279, ¶ 8, 362 Mont. 447, 264 P.3d 1142. As the party seeking to set aside the order, Jing has the burden of proof. *Puhto*, ¶ 8. We do not address arguments in Jing’s briefing that relate to the District Court’s May 25 order for supervised administration and appointment of Billstein as special administrator.⁴

² Ann Sargent Taylor did not join in the motion and has not participated in this appeal.

³ The District Judge signed the order on May 23, but it was filed on May 25. We refer to the order in this Opinion by the date of filing.

⁴ As a threshold matter, we reject Jing’s argument that the District Court lacked jurisdiction over Womack’s petition because he lacked standing to seek supervised administration of Ian’s estate. The court may appoint a special administrator on petition of “any interested person.” Sections 72-3-402(1), 72-3-701(2), MCA. As the liquidating partner of StarFire, which is a creditor of Ian’s estate because of loans he received during the pendency of the probate of Ada’s estate, Womack qualifies under the broad definition of “interested person” in § 72-1-103(25), MCA.

Should the order be vacated by reason of mistake?

¶8 Jing asked the District Court to vacate its order because Jenny’s testimony, on which the court relied, that she thought she had received about \$2,000 from Ian, was a mistake. Upon review of the bank statements, Jenny represented that she owed Ian \$8,900. The District Court found this change to be “a distinction without a difference,” as it had determined Jenny’s debt to be \$21,000. Jenny’s acknowledgment still left a significant discrepancy with the actual amount of debt, and the court maintained its finding that she had a conflict of interest and an incentive to delay administration of the Estate. The court further rejected Jenny’s asserted mistake in not knowing she could object to the court’s taking judicial notice of court records in the numerous cases Ian had litigated related to StarFire, his mother, his sister Cindy, and Ada’s estate.

¶9 On appeal, Jing includes a chart showing their calculation of the debt and arguing that the \$21,900 figure Cindy’s counsel submitted was a miscalculation. Jing acknowledges that Jenny’s “guess” at trial also was in error but submits that her dispute of the \$21,000 figure was justified. Jing maintains that the District Court’s acceptance of the \$21,000 amount was arbitrary. Jing argues that the court incorrectly determined that Jenny had a conflict of interest when it found that Ian’s contribution of funds to maintain and repair Jenny’s house was purely a loan, ignoring Ian and Jenny’s domestic partnership and how they chose to manage their private finances as a couple.

¶10 Womack responds that the precise amount of debt Jenny owed to Ian’s estate is irrelevant. The court made clear that Jenny’s debt—whether it be \$2,000, \$8,900, or

\$21,900—raised the potential for a claim by Ian’s estate against Jenny and incentivized her to delay administration.⁵

¶11 The relief Jing seeks on appeal is to direct the District Court to vacate its May 25, 2023 order. The evidence on which Jing relied in the Rule 60(b) motion and again on appeal was evidence the court had before it at the time it ordered supervised administration of Ian’s estate and appointed a special administrator. Jing was aware of that evidence but did not appeal the May 25 order. In its December 9 order, the District Court explained that any discrepancy in the amount of debt did not change its determination that Jenny should not be appointed as personal representative of Ian’s estate. A court may appoint a special administrator in a formal proceeding if it finds, “after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration[.]” Section 72-3-701(2), MCA. The court explained in its December 9 order that Jenny’s debt to the Estate gave her an incentive to delay its administration and that her extensive involvement in Ian’s contentious litigation and her inability to work with Womack rendered her appointment contrary to the “proper administration” of Ian’s estate. Despite their disagreement with the amount of the debt, Jing has not demonstrated that the court’s refusal to vacate its May 25 order was an abuse of discretion.

Did the District Court improperly fail to address Womack’s fraud on the court?

⁵ Womack submits that the hearing exhibit on which Jing relies reflects that Jenny’s debt is \$15,400, arguing that Jing continues to deny the extent of the debt. Cindy joins in Womack’s Answer Brief on appeal.

¶12 Jing alleges that the District Court’s order failed to address the facts they demonstrated that show “high probabilities of Womack’s dishonesty to the courts[.]” They accuse Womack of colluding with Cindy to steal an unsigned version of Ian’s will to support a claim of intestacy, of concealing or destroying evidence of an audio record, and of misrepresenting or withholding information from the courts. Jing’s argument appears to be, first, that Womack should not have been found credible in this proceeding and, second, that he should not be serving as the special administrator in the administration of Ada’s estate.

¶13 In their motion before the District Court, Jing cited M. R. Civ. P. 60(d), which preserves a court’s power to set aside a judgment for fraud on the court. Jing’s arguments about alleged fraud are wide-ranging and include numerous allegations outside the scope of not only their Rule 60(b) arguments to the District Court but also of this proceeding. Some we already rejected in Ian’s appeal of Womack’s appointment as special administrator in Ada’s estate and will not address further here. *See Estate of Elliot II*, ¶ 20.

¶14 Before the District Court, Jing asserted that Womack committed fraud on the court when he stated during the hearing that “he conducted Ada[’s] estate’s accounting”; that “Jenny talked Ann [in]to refus[ing to] converse with him”; and that Jenny “refused to provide” Ian’s Will. The District Court quoted Womack’s testimony during the March 7, 2022 hearing, finding that his testimony was accurate when he explained that he had just gotten the accounting on Ada’s estate “back from Wipfli” (which he had hired to perform the accounting). The court also recounted Womack’s testimony that he drew an inference

from Jenny saying things about him to Ann and that Ian's and Jenny's refusal to communicate with Womack except in writing made it difficult to get anything accomplished. "Drawing inferences," the District Court explained, "is not fraud." The court also noted that Womack explained to Jenny during the hearing what he meant by refusal to provide the will, noting that Jenny did not send it to Womack when he requested it but told him she was "going to wait and [not do] anything for a period of time. . . . So [Womack] took that as a refusal." The court further rejected Jing's assertion that Womack "misrepresented to the Montana Supreme Court [that] Ian obstructed his administration" of Ada's estate. The District Court again explained the evidence that strongly supported its extensive findings of fact and observed this Court's likewise "strong[] reject[ion of] the argument [that] Ian was not obstructionist." (Citing *Estate of Elliot II*, ¶¶ 19, 23, 28.) The court spent over three additional pages of its order reviewing Jing's myriad additional fraud allegations, refuting them with evidence from the record, and observing that one or more already had been rejected by this Court.

¶15 "Only the most egregious conduct will rise to the level of fraud upon the court." *Falcon v. Faulkner*, 273 Mont. 327, 332, 903 P.2d 197, 200 (1995) (internal quotation and citation omitted). "'It must be such fraud as denied the adversary an opportunity to have a trial or to fully present his side of the case' in order to 'constitute grounds for reopening the decree.'" *Falcon*, 273 Mont. at 332, 903 P.2d at 200 (quoting *Lance v. Lance*, 195 Mont. 176, 179-80, 635 P.2d 571, 574 (1981)). "[F]raud between the parties or perjury at

trial is not fraud upon the court.” *In re Marriage of Weber*, 2004 MT 211, ¶ 20, (quoting *In Re Marriage of Miller*, 273 Mont. 286, 292, 902 P.2d 1019, 1022 (1995)).

¶16 Many of Jing’s assertions accuse Womack of misrepresentations in his testimony, which amount to allegations of intrinsic fraud that cannot substantiate a Rule 60(b) motion. *Falcon*, 273 Mont. at 332, 903 P.2d at 200; *Marriage of Weber*, ¶ 20. What is more, Jing has not demonstrated any factual basis for their claims that Womack has concealed or destroyed evidence, misled or made untrue representations to the courts, or acted in a retaliatory fashion toward either Ian or Jenny. The District Court gave thorough consideration to the evidence presented in this proceeding, and it reviewed extensively the history and records from Ian’s numerous prior cases involving StarFire, his family, and Womack’s administration of Ada’s estate. The court did not abuse its discretion when it denied Jing’s motion to allow an independent action for fraud on the court. Finally, Jing’s invitation to “reconsider” our decision in *Estate of Elliot II* lacks support and is not properly before us in this appeal.

Should the administration of Ian’s estate be consolidated with other pending actions?

¶17 Jing’s Rule 60(b) motion finally included a request that the District Court consolidate this proceeding with two other cases—the probate of Ada’s estate and Ian’s suit against Womack—both pending in the Thirteenth Judicial District Court. Noting its limited jurisdiction as a probate court, the court observed that it would not be able to adjudicate any breach of contract claim, citing *In re Estate of Cooney*, 2019 MT 293, 398 Mont. 166, 454 P.3d 1190. We find no error in this ruling.

Should Jenny be declared a vexatious litigant?

¶18 Womack requests that this Court declare Jenny Jing a vexatious litigant in all cases related to or stemming from the administration of Ada's and Ian's estates, arguing that she meets all the requisite factors this Court has articulated to make such a finding. *See Motta v. Granite Cty. Comm'rs*, 2013 MT 172, 370 Mont. 469, 304 P.3d 720. Womack notes that a similar motion has been filed in the District Court in this proceeding. Jing objects, protesting that Womack's motion and their response before the District Court are not part of the record on appeal. They argue it would be unfair to expect them to respond within the confines of their word-limited reply brief.

¶19 As the District Court has pending before it the Appellees' separate motion to declare Jenny a vexatious litigant, we decline to entertain the argument on appeal.

¶20 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 case presents no issues of first impression and does not establish new precedent or modify existing precedent. The District Court did not abuse its discretion when it denied Appellants' Rule 60(b) motion for relief and related motions, and its December 9, 2022 order is affirmed.

/S/ BETH BAKER

We Concur:

/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA
/S/ JIM RICE

Justice Ingrid Gustafson recused herself from participating in this appeal.