

SUPREME COURT OF THE STATE OF MONTANA

In the Matter of the Osorio Irrevocable Trust

2014 MT 286 (Mont. 2014) · No. DA 14-0043 · Decided October 28, 2014

SUMMARY

The Montana Supreme Court held that an appeal challenging dissolution of a temporary injunction was moot because the property the injunction sought to prevent from being sold had already been sold to a third party. The court affirmed the district court’s order, awarded the trustee attorney fees and costs under Montana’s trust code, and remanded for determination of those fees and costs.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Beth Baker; Mike McGrath; Laurie McKinnon; James Jeremiah Shea; Jim Rice
JURISDICTION	Montana
DECIDED	October 28, 2014
DOCKET	DA 14-0043
DISPOSITION	affirmed
PROCEDURAL POSTURE	Karlene A. Khor appealed the Fourth Judicial District Court's order dissolving a temporary injunction that had barred Linda St. Peter, as trustee, from selling property held by the Osorio Irrevocable Trust.
STANDARD OF REVIEW	The Court reviewed the District Court's dissolution of the temporary injunction for manifest abuse of discretion, but did not reach that issue because the appeal was moot. Mootness was treated as a threshold justiciability and jurisdictional issue reviewed by determining whether effective appellate relief remained available.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion
PARTIES	Karlene A. Khor v. Linda St. Peter

TOPICS

- mootness
- appellate procedure
- injunctions
- attorney fees
- trust administration

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the District Court manifestly abused its discretion by dissolving the temporary injunction preventing the trustee from selling the trust property.
2. Whether the appeal was moot because the property had been sold to a third party and the requested relief—reinstatement of the temporary injunction—could no longer provide effective relief.
3. Whether the appellee was entitled to attorney fees and costs on appeal under Montana Code Annotated § 72-38-1004.

HOLDINGS

1. The appeal was moot because the property had been sold to a third party, the sale the injunction was intended to prevent had already occurred, and reinstating the injunction could not provide effective appellate relief.
2. Linda St. Peter was entitled to costs and expenses incurred in the appeal, including reasonable attorney fees, under Montana Code Annotated § 72-38-1004.

KEY QUOTATIONS

“An issue becomes moot when the circumstances present at the outset of the action have ceased to exist, or if the court is unable to grant effective relief or to restore the parties to their original positions due to an intervening event or change in circumstances.” (¶ 8)

“Even if this Court were to reverse the District Court’s order dissolving the temporary injunction, the injunction preventing the sale to a third party would no longer serve any purpose because the event that the injunction was designed to prevent already has occurred.” (¶ 9)

“That section provides: “In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.”” (¶ 12)

FACTUAL BACKGROUND

Herbert and Betty Lou Osorio allegedly created the Osorio Irrevocable Trust in May 2012 and conveyed a home and real property in Kalispell to the Trust, naming Linda St. Peter as trustee. Karlene Khor challenged the Trust based on an allegedly forged signature and allegations of duress and undue influence, and sought to prevent a sale because the sale proceeds might affect Herbert's eligibility for veterans' benefits. Although the District Court initially enjoined the sale, it later dissolved the injunction, and the property was sold to a third party on December 20, 2013, with the proceeds placed in a trust account.

PROCEDURAL HISTORY

Khor challenged the existence of the trust and sought a temporary injunction preventing the sale of trust property. The District Court entered the injunction, later dissolved it after a hearing, and issued a written order

on January 2, 2014. The property was sold to a third party before the appeal was decided, and the Montana Supreme Court held that the appeal was moot, affirmed the District Court's order, awarded appellate fees and costs, and remanded for their determination.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case was remanded to the District Court for determination of appellate fees and costs and for further proceedings.

CASES CITED

- Greater Missoula Area Fed'n of Early Childhood Educators v. Child Start, Inc., 2009 MT 362, ¶¶ 22-23, 353 Mont. 201, 219 P.3d 881
- Sudan Drilling, Inc. v. Anacker, 2014 MT 72, ¶¶ 8, 10-11, 374 Mont. 272, 320 P.3d 977
- Mt. W. Bank, N.A. v. Cherrad, LLC, 2013 MT 99, ¶ 30, 369 Mont. 492, 301 P.3d 796
- Progressive Direct Ins. Co. v. Stuivenga, 2012 MT 75, ¶ 17, 364 Mont. 390, 276 P.3d 867