

SUPREME COURT OF THE STATE OF MONTANA

Sara Kae Cox v. Daniel Scott Cox

Cox, 2015 MT 78N (Supreme Court of the State of Montana 2015) · No. DA 14-0388 · Decided March 10, 2015

SUMMARY

The Montana Supreme Court affirmed the denial of Daniel Cox’s motion for relief under Montana Rule of Civil Procedure 60 from an order adopting an amended parenting plan. The court held that the motion was untimely in part, that alleged procedural errors and references to disciplinary proceedings did not affect substantial rights, and that recusal and deposition of the presiding judge were unwarranted. The opinion was issued as a noncitable memorandum opinion.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Beth Baker; Mike McGrath; James Jeremiah Shea; Laurie McKinnon; Michael E. Wheat
JURISDICTION	Montana
DECIDED	March 10, 2015
DOCKET	DA 14-0388
DISPOSITION	affirmed
PROCEDURAL POSTURE	Daniel Cox appealed the District Court's denial of his Montana Rule of Civil Procedure 60 motion for relief from an order adopting an amended parenting plan and the court's order quashing his subpoena for the deposition of the presiding judge.
STANDARD OF REVIEW	The denial of a Montana Rule of Civil Procedure 60 motion and the quashing of the deposition subpoena are reviewed for abuse of discretion. Reversible error requires that a substantial right of the appellant be affected.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Daniel Scott Cox v. Sara Kae Cox

TOPICS

- child custody
- family law procedure
- appellate procedure
- standard of review
- preservation of error

PRACTICE AREAS

family law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by denying Daniel's Rule 60 motion without oral argument.
2. Whether references to Office of Disciplinary Counsel proceedings affected Daniel's substantial rights.
3. Whether the presiding judge was required to recuse himself because of alleged ex parte communications and his potential status as a material witness.
4. Whether the District Court abused its discretion by quashing Daniel's subpoena for the deposition of the presiding judge.

HOLDINGS

1. The District Court did not abuse its discretion by denying Daniel's Rule 60 motion without oral argument because Daniel had already had extensive opportunities to present his evidence and legal arguments, and he failed to show that the absence of oral argument affected a substantial right.
2. Any improper reference to the Office of Disciplinary Counsel's conclusions did not warrant relief because the District Court denied the Rule 60 motion on independent grounds and the references did not affect Daniel's substantial rights or the outcome.
3. The District Court did not err by allowing Judge Langton to preside because Daniel's allegations concerned the judge's rulings and administrative actions in the case, and the record did not establish improper ex parte communications or a basis requiring recusal.
4. The District Court did not abuse its discretion by quashing Daniel's subpoena because Daniel did not move for leave to take the deposition after final judgment and did not show that the deposition was necessary to prevent a failure or delay of justice.

KEY QUOTATIONS

“this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.” (§ 1)

“The District Court did not abuse its discretion or commit reversible errors of law in its handling of Daniel’s post-judgment motion.” (§ 19)

FACTUAL BACKGROUND

Sara Cox moved to amend the parties' parenting plan after their 2010 divorce. Although Sara's attorney initially failed to submit a proposed amended parenting plan with the motion, the court later obtained the proposal, allowed Daniel to respond and participate in briefing and a two-day hearing, and adopted Sara's amended plan. Daniel later filed an untimely Rule 60 motion alleging surprise, fraud, invalidity, and fraud on the court, and he sought to disqualify and depose the presiding judge based on alleged ex parte communications.

PROCEDURAL HISTORY

The parties were divorced in 2010, and the District Court adopted their joint parenting plan. After Sara Cox moved to amend the plan, the District Court held a hearing and entered an amended parenting plan on December 4, 2012. Daniel's initial appeal was dismissed for failure to file an opening brief. More than one year later, he sought relief under Rule 60, moved to disqualify the judge, and subpoenaed the judge for deposition. The District Court denied the Rule 60 motion and quashed the subpoena; the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Marriage of Markegard, 2006 MT 111, ¶ 11, 332 Mont. 187, 136 P.3d 532
- Seltzer v. Morton, 2007 MT 62, ¶ 65, 336 Mont. 225, 154 P.3d 561
- In re A.N., 2000 MT 35, ¶ 55, 298 Mont. 237, 995 P.2d 427
- Fennessy v. Dorrington, 2001 MT 204, 306 Mont. 307, 32 P.3d 1250