

SUPREME COURT OF MONTANA

Emmerson v. Walker, 2010 MT 167

236 P.3d 598 (2010) · No. DA 09-0487 · Decided July 28, 2010

SUMMARY

The Supreme Court of Montana affirmed a judgment finding S. Tucker Johnson liable for tortious interference with a property exchange agreement between Valerie Emmerson and Wallace and Rana Rae Walker. The court also upheld the award of contract-based attorney fees to the Walkers and the denial of punitive damages. The opinion addressed preservation of constitutional arguments, segregation of attorney fees, and the discretionary standard governing punitive damages.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Montana                                                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Justice Jim Rice; Jim Rice; W. William Leaphart; Michael E. Wheat; Patricia Cotter; James C. Nelson                                                                                                                                                                                                                                                                                             |
| JURISDICTION          | Montana                                                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED               | July 28, 2010                                                                                                                                                                                                                                                                                                                                                                                   |
| DOCKET                | DA 09-0487                                                                                                                                                                                                                                                                                                                                                                                      |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | Johnson appealed the judgment holding that he tortiously interfered with the Emmerson-Walker exchange agreement; Emmerson appealed the attorney-fee award to the Walkers; and the Walkers cross-appealed the denial of punitive damages.                                                                                                                                                        |
| STANDARD OF REVIEW    | Findings of fact are reviewed for clear error; conclusions of law are reviewed de novo for correctness; constitutional issues receive plenary review; attorney-fee awards generally are reviewed for abuse of discretion, although a conscionable contract requiring fees leaves the district court no discretion to deny them; denial of punitive damages is reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                                                  |
| PARTIES               | Valerie Emmerson, S. Tucker Johnson v. Wallace C. Walker, Rana Rae Walker                                                                                                                                                                                                                                                                                                                       |

TOPICS

intentional interference with contract

torts

punitive damages

remedies

appellate procedure

## PRACTICE AREAS

torts

contracts

real estate

remedies

appellate procedure

## QUESTIONS PRESENTED

1. Whether Johnson's conduct constituted tortious interference with the contract between Emmerson and the Walkers.
2. Whether the district court abused its discretion in awarding the Walkers \$35,505.95 in attorney fees.
3. Whether the district court erred by denying the Walkers punitive damages against Johnson.

## HOLDINGS

1. Johnson's intentional and calculated efforts to induce Emmerson to abandon the exchange agreement, secretly acquire the Walkers' property, and use litigation to defeat the agreement were improper and established the elements of tortious interference with contract. His unpreserved constitutional and statutory right-to-petition arguments were waived, and plain error review was unwarranted.
2. The district court did not abuse its discretion by awarding the Walkers \$35,505.95 in attorney fees because the exchange agreement authorized fees for enforcing its provisions, the fees related to the Emmerson and Johnson matters were substantially intertwined, and only approximately \$3,000 was shown to be solely attributable to the Johnson claim.
3. The district court did not abuse its discretion by denying punitive damages because the Walkers failed to establish actual malice by clear and convincing evidence, and the trier of fact had discretion to determine whether punitive damages were appropriate.

## KEY QUOTATIONS

*"In order to establish a claim of tortious interference with a contract, a claimant must prove the defendant's acts: 1) were intentional and willful; 2) were calculated to cause damage to the plaintiff in his or her business; 3) were done with the unlawful purpose of causing damage or loss, without right or justifiable cause on the part of the actor; and 4) that actual damages and loss resulted."* (¶ 23)

*"When calculating attorney fees in a case "where it is impossible to segregate the attorney's time between claims entitling the party to attorney fees and other claims," an attorney may be entitled to the "entire fee.""* (¶ 32)

*"All elements of the claim for punitive damages must be proved by clear and convincing evidence," meaning "there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.""* (¶ 38)

## FACTUAL BACKGROUND

Emmerson and the Walkers entered a May 15, 2006, like-kind property-exchange agreement involving their respective Montana ranches. After learning of the agreement, Johnson offered Emmerson substantially more than

the value she would receive under the exchange, attempted to acquire the Walkers' property through an LLC, encouraged Emmerson to repudiate the agreement, financed and orchestrated litigation seeking to invalidate it, and otherwise sought to prevent the exchange from closing. The district court found the agreement valid and enforceable, ordered Emmerson to perform, found Johnson's conduct tortious interference, awarded compensatory damages and attorney fees, but denied punitive damages.

## PROCEDURAL HISTORY

The Sixth Judicial District Court of Sweet Grass County conducted a bench trial and held that the exchange agreement between Emmerson and the Walkers was valid and enforceable, ordered specific performance, found Johnson liable for tortious interference, awarded the Walkers \$150,000 in emotional-distress damages and \$35,505.95 in attorney fees, and denied punitive damages. Johnson's counterclaims were dismissed. The Montana Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Baltrusch v. Baltrusch, 2003 MT 357, 319 Mont. 23, 83 P.3d 256
- Hidden Hollow Ranch v. Fields, 2004 MT 153, 321 Mont. 505, 92 P.3d 1185
- State v. Carter, 2005 MT 87, 326 Mont. 427, 114 P.3d 1001
- Glaspey v. Workman, 234 Mont. 374, 763 P.2d 666 (1988)
- Tacke v. Energy West, Inc., 2010 MT 39, 355 Mont. 243, 227 P.3d 601
- In re Szafruk, 2010 MT 90, 356 Mont. 141, 232 P.3d 361
- Bolz v. Myers, 200 Mont. 286, 651 P.2d 606 (1982)
- Hardy v. Vision Serv. Plan, 2005 MT 232, 328 Mont. 385, 120 P.3d 402
- Hughes v. Lynch, 2007 MT 177, 338 Mont. 214, 164 P.3d 913
- Stokes v. State, 2007 MT 169, 338 Mont. 165, 162 P.3d 865
- Farrington v. Buttrey Food & Drug Stores Co., 272 Mont. 140, 900 P.2d 277 (1995)
- State v. Courville, 2002 MT 330, 313 Mont. 218, 61 P.3d 749
- State v. Adgerson, 2003 MT 284, 318 Mont. 22, 78 P.3d 850
- Thibodeau v. Bechtold, 2008 MT 412, 347 Mont. 277, 198 P.3d 785
- State v. Ferguson, 2005 MT 343, 330 Mont. 103, 126 P.3d 463
- In re Estate of Kindsfather, 2005 MT 51, 326 Mont. 192, 108 P.3d 487
- Schaffer v. Champion Home Builders Co., 229 Mont. 533, 747 P.2d 872 (1987)
- State v. Taylor, 2010 MT 94, 356 Mont. 167, 231 P.3d 79
- State v. Finley, 276 Mont. 126, 915 P.2d 208 (1996)
- State v. Gallagher, 2001 MT 39, 304 Mont. 215, 19 P.3d 817
- State v. Price, 2007 MT 269, 339 Mont. 399, 171 P.3d 293

- Reno v. Erickstein, 209 Mont. 36, 679 P.2d 1204 (1984)
- In re K.J., 2010 MT 41, 355 Mont. 257, 231 P.3d 75
- Paulson v. Flathead Conserv. Dist., 2004 MT 136, 321 Mont. 364, 91 P.3d 569
- Jefferson County v. McCauley Ranches, LLP, 1999 MT 333, 297 Mont. 392, 994 P.2d 11
- Northwestern Nat'l Bank of Great Falls v. Weaver-Maxwell, Inc., 224 Mont. 33, 729 P.2d 1258 (1986)
- Kadillak v. Mont. Dep't of State Lands, 198 Mont. 70, 643 P.2d 1178 (1982)
- Blue Ridge Homes, Inc. v. Thein, 2008 MT 264, 345 Mont. 125, 191 P.3d 374
- Donnes v. Orlando, 221 Mont. 356, 720 P.2d 233 (1986)
- Boyne USA, Inc. v. Lone Moose Meadows, LLC, 2010 MT 133, 356 Mont. 408, 235 P.3d 1269
- Eschenbacher v. Anderson, 2001 MT 206, 306 Mont. 321, 34 P.3d 87
- Dees v. Am. Nat'l Fire Ins. Co., 260 Mont. 431, 861 P.2d 141 (1993)
- Beaver v. Mont. DNRC, 2003 MT 287, 318 Mont. 35, 78 P.3d 857
- Maloney v. Home & Investment Center, Inc., 2000 MT 34, 298 Mont. 213, 994 P.2d 1124
- Seltzer v. Morton, 2007 MT 62, 336 Mont. 225, 154 P.3d 561
- Drayton v. United States, 801 F.2d 117 (3d Cir. 1986)