

SUPREME COURT OF MONTANA

In re the Marriage of Albert S. Gollnick and Jane S. Gollnick

2010 MT 150N (2010) · No. DA 09-0685 · Decided July 13, 2010

SUMMARY

The Montana Supreme Court reviewed the denial of Jane S. Gollnick’s motion to set aside a default judgment dissolving her marriage and dividing marital property. The court held that the District Court did not abuse its discretion under Montana Rules of Civil Procedure 55(c) and 60(b), and affirmed the judgment. The memorandum decision was designated noncitable under the Montana Supreme Court’s internal operating rules.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice W. William Leaphart; W. William Leaphart; Mike McGrath; James C. Nelson; Michael E. Wheat; Brian Morris
JURISDICTION	Montana
DECIDED	July 13, 2010
DOCKET	DA 09-0685
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jane S. Gollnick appealed the Ravalli County District Court’s denial of her motion to set aside a default judgment and final decree dissolving the parties’ marriage.
STANDARD OF REVIEW	The denial of a motion to set aside judgment is reviewed for a slight abuse of discretion because default judgments are not favored. A district court abuses its discretion when its order is arbitrary, shows no conscientious judgment, or exceeds the bounds of reason.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Jane S. Gollnick v. Albert S. Gollnick

TOPICS

- default judgment
- dissolution of marriage
- family law procedure
- appellate procedure
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by entering a default judgment and final decree despite notice that Jane was hospitalized.
2. Whether Jane established grounds under Montana Rule of Civil Procedure 60(b) to set aside the default judgment.
3. Whether alleged deficiencies in Albert's financial disclosures and alleged inequity or excess in the property division required setting aside the judgment.

HOLDINGS

1. The District Court did not abuse its discretion in denying Jane's motion to set aside the default judgment because Jane failed to act after receiving notice of the dissolution proceeding and failed to present sufficient evidence supporting relief from judgment.

KEY QUOTATIONS

“As default judgments are not favored, we review a district court’s denial of a motion to set aside judgment for only a slight abuse of discretion.” (¶ 10)

“It is manifest on the face of the briefs and the record before us that the appeal is without merit because the findings of fact are supported by substantial evidence, the legal issues are clearly controlled by settled Montana law which the District Court correctly interpreted, and the record supports the District Court’s denial of Jane’s motion to set aside judgment.” (¶ 13)

FACTUAL BACKGROUND

Albert filed a petition for dissolution on April 10, 2009, and Jane was served five days later with the petition, financial disclosures, summons, and related documents. Jane did not respond, appear, object, or file financial disclosures, and her default was entered on May 12, 2009. After Jane was hospitalized and a physician requested a postponement, the District Court proceeded with the July 2 hearing, heard Albert's sworn testimony, entered the dissolution decree, and divided the property as requested. Jane first appeared more than three months later by moving to set aside the judgment.

PROCEDURAL HISTORY

Albert Gollnick filed a petition for dissolution and personally served Jane, who did not respond or appear. The District Court entered Jane's default and later entered a default judgment and final decree of dissolution after a hearing at which Albert testified. Jane subsequently moved to set aside the judgment, but the District Court denied her motion, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- ABC Collectors, Inc. v. Birnel, 2008 MT 35, ¶ 10, 341 Mont. 310, 176 P.3d 1067
- Essex Ins. Co. v. Moose's Saloon, Inc., 2007 MT 202, ¶ 19, 338 Mont. 423, 166 P.3d 451
- Tschida v. Rowe, 2003 MT 192, ¶ 12, 316 Mont. 503, 74 P.3d 1043

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