

SUPREME COURT OF THE STATE OF MONTANA

Drumm v. Shelly

2001 MT 302N (2001) · No. No. 99-394 · Decided December 28, 2001

SUMMARY

The Montana Supreme Court affirmed a district court judgment arising from the purchase of a lot allegedly affected by water-access and sanitation concerns. The court upheld dismissal of the rescission claim and dismissal of one defendant following a settlement stipulation, and concluded that the jury was properly instructed on constructive fraud and that the court properly answered the jury's clarification question. The jury's \$5,000 Consumer Protection Act award against the remaining defendant was affirmed.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Chief Justice Karla M. Gray; Karla M. Gray; Patricia Cotter; Terry N. Trieweller; James C. Nelson; Jim Rice
JURISDICTION	Montana
DECIDED	December 28, 2001
DOCKET	No. 99-394
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed after a jury trial from orders dismissing their rescission claim and Tom Hill as a defendant, a jury verdict awarding \$5,000 against Dennie M. Shelly under the Montana Consumer Protection Act, and rulings concerning constructive-fraud jury instructions.
STANDARD OF REVIEW	The correctness of the District Court's legal conclusions, including whether a claim should be dismissed as a matter of law, is reviewed for correctness. Refusal to give or modify a jury instruction is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Nancy Drumm, Lawrence Drumm v. Dennie M. Shelly, Tom Hill

TOPICS

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QUESTIONS PRESENTED

1. Whether the District Court erred in dismissing the rescission claim and dismissing Tom Hill from the lawsuit based on the parties' stipulation.
2. Whether the District Court abused its discretion by refusing to include the plaintiffs' proposed specific language concerning nondisclosure in the constructive-fraud jury instruction.
3. Whether the District Court abused its discretion in responding to the jury's question by explaining that only the first statutory definition of constructive fraud applied to the case.

HOLDINGS

1. The District Court did not err in dismissing the rescission claim and dismissing Tom Hill as a defendant because the Drumms' stipulation settled their dispute with Hill and left no remaining defendant, as alleged in the complaint, who could be liable on the rescission claim concerning the real estate contract.
2. The District Court did not abuse its discretion by refusing to add the Drumms' proposed language stating that a real estate agent's failure to disclose a material fact or legally required documents is fraudulent.
3. The District Court did not abuse its discretion by instructing the jury to focus on the first statutory paragraph of constructive fraud and explaining that the second paragraph did not apply to the case.

KEY QUOTATIONS

“the following decision shall not be cited as precedent.” (§1)

“We hold the District Court did not err in dismissing the rescission claim and in dismissing Hill from the lawsuit.” (§24)

“Affirmed.” (§34)

FACTUAL BACKGROUND

The Drumms purchased Lot 8 in Schoolhouse Lake Estates near Troy, Montana, from Tom Hill under a contract for deed after working with Northwest Properties, whose broker-owner was Dennie Shelly. The subdivision lacked community water and septic systems, and water was difficult to obtain; the Drumms later made two unsuccessful attempts to drill a well and substantially exhausted their funds. They alleged that the availability of water and sanitation-related restrictions had been misrepresented or inadequately disclosed. The jury found Shelly liable under the Montana Consumer Protection Act but rejected the constructive-fraud claim.

PROCEDURAL HISTORY

The Drumms sued to rescind a real estate contract with Hill or recover damages from Shelly for constructive fraud and violations of the Montana Consumer Protection Act. Before trial, the Drumms and Hill entered into a stipulation under which Hill canceled the remaining contract balance and the Drumms accepted that relief as full liquidated damages for claims against Hill. The District Court dismissed the rescission claim and Hill, and the jury later found that Shelly violated the Act but did not commit constructive fraud, awarding \$5,000 in damages. The District Court denied treble damages but awarded attorney fees and costs, and the Drumms appealed.

DISPOSITION

affirmed

CASES CITED

- Skinner Enterprises, Inc. v. Lewis and Clark City-County Health Dept., 1999 MT 106, 294 Mont. 310, 980 P.2d 1049
- Cechovic v. Hardin & Assoc. (1995), 273 Mont. 104, 902 P.2d 520
- McCarty v. Lincoln Green, Inc. (1980), 190 Mont. 306, 620 P.2d 1221
- Durbin v. Ross (1996), 276 Mont. 463, 916 P.2d 758
- Harwood v. Glacier Elec. Co-op., Inc. (1997), 285 Mont. 481, 949 P.2d 651