

FILED

03/07/2023

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 22-0393

DA 22-0393

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 41N

ANNELIES AIKING-TAYLOR,

Plaintiff and Appellant,

v.

OLIVER SERANG,

Defendants and Appellee.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DV-19-1076
Honorable John W. Larson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Annelies Aiking-Taylor, Self-represented, Missoula, Montana

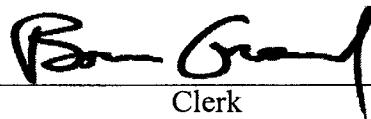
For Appellee:

Louis C. Villemez, ASUM Legal Services, University of Montana,
Missoula, Montana

Submitted on Briefs: February 8, 2023

Decided: March 7, 2023

Filed:



Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion, shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Annelies Aiking-Taylor appeals from the Amended Judgment and Orders entered by the District Court upon remand of this landlord-tenant matter, following this Court's Opinion in the first appeal. *Aiking-Taylor v. Serang*, 2021 MT 118N, 404 Mont. 554, 485 P.3d 746. There, this Court affirmed the District Court's judgment in favor of tenant Oliver Serang "in all respects," including an award of \$27,946.25 in attorney fees and \$45 in costs, "except for the \$1,000 in statutory damages awarded to Serang for Aiking-Taylor's two MCPA [Montana Consumer Protection Act] violations," which damages were reversed. *Aiking-Taylor*, ¶¶ 16, 18. We reversed the MCPA *damages* because Serang had already recovered the damages by withholding his last month's rent payment. *Aiking-Taylor*, ¶ 16. We did not reverse the judgment that Aiking-Taylor had twice violated the MCPA. In affirming the attorney fee award, the Court cited the provisions of the MCPA and Residential Landlord and Tenant Act, as well as the written agreement between Aiking-Taylor and Serang, which granted reasonable attorney fees and costs to the prevailing party in litigation, and concluded that Serang was the prevailing party in this

matter. *Aiking-Taylor*, ¶ 17.¹ The case was remanded to the District Court for entry of an amended judgment to that effect. *Aiking-Taylor*, ¶ 18.

¶3 On March 31, 2022, after remand, the District Court entered an Amended Judgment, which stated that, pursuant to this Court’s Opinion in the first appeal, “[j]udgment in this matter is amended to state that the District Court’s award of \$1,000 in statutory damages to Defendant Oliver Serang is withdrawn.” On April 28, 2022, Aiking-Taylor filed a Motion to Amend the Amended Judgment, arguing that because the Amended Judgment “awards no damages” to Serang, and Aiking-Taylor had been awarded \$55.59 for an unpaid utility bill, Aiking-Taylor was now the prevailing party and was entitled to her reasonable attorney fees and costs, rather than Serang. On May 18, 2022, the District Court entered an Order denying Aiking-Taylor’s motion to amend the judgment, reasoning that this Court had upheld its judgment denying Aiking-Taylor’s damages claims.

¶4 On June 15, 2022, Aiking-Taylor filed a second motion to amend the Amended Judgment, again arguing that Aiking-Taylor should be deemed the prevailing party as the only party to be awarded damages, that being the \$55.59 utility bill, and disagreeing with a statement in the original Judgment that Serang had “agreed at all times to pay” the bill. Aiking-Taylor also made extensive arguments about other issues previously decided in the case. On June 22, 2022, the District Court entered an Order and Judgment denying the second motion to amend the judgment, concluding Aiking-Taylor was engaging in

¹ We also noted that Aiking-Taylor had not challenged the reasonableness of the fees awarded by the District Court. *Aiking-Taylor*, ¶ 17.

frivolous efforts to challenge matters previously ruled upon by the District Court and this Court, which had caused the court and counsel to expend time unnecessarily and to incur additional fees. The District Court declared Aiking-Taylor to be a vexatious litigant and, in consequence, granted Serang \$1,260 in attorney fees for having to respond to Aiking-Taylor's filings, which Serang had requested, and ordered that the Clerk of the District Court "shall not accept any further pleadings from [Aiking-Taylor] without first Court approval."

¶5 Aiking-Taylor now appeals, arguing primarily that the District Court erred by denying her requests to be declared the prevailing party in the litigation, but the arguments are unavailing. In the first appeal, this Court reversed the \$1,000 in MCPA *damages* awarded to Serang only because Serang had already effectively recovered them by withholding his final rent payment to Aiking-Taylor. We thus reversed to avoid a double payment of damages to Serang, and did not reverse the determination that Aiking-Taylor had committed *violations* of the MCPA for which Serang was entitled to damages. Thus, on that issue, Serang was, and continued to be, the prevailing party. Further, with the exception of a \$55.59 utility bill, Serang prevailed on all other issues and, therefore, was clearly the prevailing party in the litigation entitled to an award of attorney fees under the governing statutes and the parties' written agreement. Indeed, this Court so held in the first appeal, which is the law of the case. *See Aiking-Taylor*, ¶ 17 ("Serang is the prevailing party."). Aiking-Taylor's continuing myopic focus on a statement made in the original judgment about the \$55.59 utility bill is ill-advised, and the continued litigation on this point, requiring expenditure of additional time and expense for the parties and the courts,

was held to be frivolous by the District Court. Clinging to the above-described arguments, Aiking-Taylor argues on appeal the District Court erred by so concluding, but we affirm the declaration and penalty.

¶6 Serang is entitled to attorney fees incurred in this appeal.

¶7 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. Further, the District Court did not abuse its discretion.

¶8 Affirmed, and remanded for entry of an amended judgment granting Serang his attorney fees on appeal.

/S/ JIM RICE

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR



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04/11/2023

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APR 11 2023

ANNELIES AIKING-TAYLOR,

Plaintiff and Appellant,

v.

OLIVER SERANG,

Defendant and Appellee.

ORDER

Annelies Aiking-Taylor has filed a Petition for Rehearing of this Court's Opinion entered March 7, 2023. *See Aiking-Taylor v. Serang*, No. 22-0393, 2023 MT 41N, 2023 Mont. LEXIS 277. Through counsel, Oliver Serang has filed an objection to the Petition.

Having reviewed the Petition and Objection, we conclude that Aiking-Taylor has not demonstrated existence any of the criteria, including an overlooked fact or a conflict with controlling authority, which would warrant rehearing. M. R. App. P. 20(1)(a)(i)-(iii). Therefore,

IT IS ORDERED that the Petition for Rehearing is DENIED and DISMISSED.

The Clerk of the Supreme Court is directed to provide a copy of this Order to counsel of record and to Annelies Aiking-Taylor personally.

DATED this 11th day of April, 2023.

Three handwritten signatures are shown, each above a horizontal line. The top signature is "Jim Rice", the middle is "Janie Johnson", and the bottom is "Lorraine Pether".

Joseph Hart

D. M. Bell

Justices

1 John W. Larson, District Judge
2 Fourth Judicial District Dept. 3
3 Missoula County Courthouse
4 200 West Broadway
5 Missoula, MT 59802
6 (406) 258-4773

4 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

5 ANNELISE AIKING-TAYLOR,

Dept. 3
Cause No. DV-19-1076

6 Plaintiff,

7 vs.

ORDER AND JUDGMENT

8 OLIVER SERANG,

9 Defendant.

11
12 Pending before the Court is Plaintiff's Second Motion to Amend the
13 Amended Judgment. In the Montana Supreme Court opinion in this matter
14 dated July 12, 2021, the Court states: "The District Court's ruling on Aiking-
15 Taylor's damages claims is affirmed."

16 After review of the pleadings and file herein,

17 IT IS HEREBY ORDERED that Plaintiff's Second Motion to Amend the
18 Amended Judgment is denied.

19 It appears that Plaintiff's tactic is to prolong litigation by placing frivolous
20 matters before the Court. The matters she contests have already been ruled
21 on by this Court and the Montana Supreme Court. The filing of such frivolous
22 motions requiring responses amounts to a waste of the Court's time in
23

1 reviewing such filings. Finally, these filings require Defendant's attorney to
2 respond within the briefing schedules mandated by the Montana Rules of Civil
3 Procedure. For Defendant's attorney to waste time responding to frivolous
4 motions cause Defendant to incur substantial fees both in paying her own
5 attorney

6
7 Montana district courts possess inherent power to sanction willful or
8 reckless conduct, especially when combined with frivolousness, harassment,
9 or improper purpose. See Motta v. Granite County Comm'r's, 203 MT 172, ¶¶
10 17, 22, 340 Mont. 469, 304 P.3d 720.

11
12 Accordingly, the Court deems these pleadings vexatious. Pursuant to
13 Mont. Code Ann. §37-61-421 the Court awards Defendant his attorney's fees
14 and costs for having to respond

15
16 IT IS HEREBY ORDERED that

17
18 1. Defendant's Motion is granted and an additional attorney fee
19 award of \$1,260.00 for a total judgment for Defendant of fees and
20 costs in this matter of \$29,251.25.

21
22 2. **The Clerk of Court shall not accept any further pleadings**
23 **from Plaintiff without first Court approval.**

24 Dated this 22nd day of June, 2022.

25
26 
JOHN W. LARSON, DISTRICT JUDGE

1
2 Copies of the foregoing were sent to:

3 Annelies Aiking-Taylor - annelies.aikingtaylor@gmail.com
4 c/o E.G. Aiking -van Wageningen
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