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## Chapman v. Maxwell, 2014 MT 35

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*Chapman v. Maxwell*, 2014 MT 35, \_\_\_ Mont. \_\_\_, \_\_\_ P.3d \_\_\_. Civil Procedure and Tort Law.

**The failure of a party to file a response brief on a motion for summary judgment does not relieve the district court of the duty to engage in a Rule 56 analysis to determine whether there is a genuine issue of material fact. However, this is not reversible error because the Court’s de novo standard of review of summary judgment decisions allows it to review the record and make its own determination.**

Allison Chapman (“Chapman”) filed a complaint against Ladonna Maxwell (“Maxwell”), an advanced practice registered nurse, asserting that Maxwell had defamed her by documenting in her medical records that she may have been malingering or seeking narcotics. Maxwell filed a motion for summary judgment and argued in part that: “(1) her statements in the medical record were privileged and were disclosed with Chapman’s consent; [and] (2) her statements were true and/or merely opinions that did not rise to defamation.”

Chapman, representing herself, did not file a brief in response to Maxwell’s motion and expressly informed the district court that she did not intend to because she wanted to mediate the case. The district court granted Maxwell’s motion for summary judgment due to Chapman’s failure to respond. The district court noted that Chapman had previously filed at least 43 cases in various jurisdictions, and thus “was familiar with and expected to follow” the rules of court. Chapman filed a timely appeal arguing, in part, that the district court erred in granting summary judgment to Maxwell.

In determining whether the district court erred in granting summary judgment, the Court noted that Montana Uniform District Rule 2(b) provides that failure to file a timely answer brief shall be deemed an admission that the motion is well taken. However, the district court still must determine if there is any genuine issue of material fact prior to ruling on a motion for summary judgment. Although the district court erred by failing to conduct a Rule 56 analysis, the error did not require reversal.

Under the Court's de novo standard of review of summary judgment decisions, the Court may make its own determination regarding the existence of disputed issues of fact and entitlement to judgment as a matter of law. This review convinced the Court that there were no genuine issues of material fact in dispute. Chapman's defamation claims failed because Maxwell's statements were privileged, and they were based on personal observations and opinions. The Court affirmed the district court's summary judgment ruling because it determined there were no genuine issues of material fact.

Montana practitioners should be aware that failure to file a response brief to a summary judgment motion does mean that the motion is deemed well taken for the purposes of Uniform District Court Rule 2(b). However, the district court still has a duty to engage in a Rule 56 analysis.

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Honorable Greg Pinski, District Court for the Eighth Judicial District

For Appellant: Allison Chapman, self-represented; Great Falls, Montana

For Appellee: Peter J. Stokstad and Elizabeth L. Hausbeck of Garlington, Lohn & Robinson, PLLP; Missoula, Montana

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