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## Britton v. Brown, 2013 MT 30

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*Britton v. Brown*, 2013 MT 30, 368 Mont. 379, --- P.3d --- (Mont. Feb. 12, 2013).

**Due process requires a court hearing when a party makes substantiated claims calling the fairness of property division into question in a partition action. Final partition judgments must be supported by substantial credible evidence.**

In *Britton v. Brown*, the Montana Supreme Court held, as a matter of first impression, that when a party to a partition action makes a substantiated claim of factual or legal error in the partition referees' report, due process requires the district court to hold a hearing to weigh the objections and determine whether the referees' report equitably divides the property. The Court previously acknowledged that the Due Process Clause of the Montana Constitution applies to partition actions because they divest a person of her property, but had not addressed what 'Due Process' meant to a party challenging the referees' report.

Helen L. Britton and Elise C. Brown owned as tenants in common a 10.88 acre property along Flathead Lake since 1992. The property has three distinct topographical features: a rocky point on the northern end, a gravel beach with a cabin at the southern end, and a 70-foot wide "neck" of land connecting the rocky point to the gravel beach.

In October 2007, Helen L. Britton filed an action seeking equitable partition of the property in the Twentieth Judicial District Court of Montana, Lake County. In response, Brown admitted that she co-owned the property and that it could be equitably partitioned. As contemplated by Mont. Code Ann. § 70–29–202, the district court appointed three referees to recommend a method of partitioning the property. One referee was selected by Brown, one by Britton, and a third by the other two referees.

The referees submitted a final report to the court on April 25, 2011, which recommended dividing the property into two parcels. They estimated that the parcels were of roughly equal monetary value, despite being significantly disparate in size. Parcel A, with 1,023 feet of lakefront, included the rocky point, the "neck" of land, and a small portion of the gravel beach. The smaller Parcel B consisted of 245 feet of lakefront and the majority of the gravel beach. The referees attributed the size difference to the marketability of the respective parcels: land in Parcel B had a higher value than that of Parcel A because it could be more easily developed.

Brown objected to the final report, disagreeing with the determination of each parcel's value. She filed a list of her objections in answer to the final report. Several months later, on August 25, 2011, she filed a motion for trial and submitted eleven affidavits—some from purported experts—attacking conclusions relied upon by the referees in their final report. The district court did not respond to Brown's objections, motion, or affidavits. On October 14, 2012, it entered an order confirming the referees' proposed partition and ordered Britton to prepare a final judgment based on the referees' recommendation. On February 28, 2012, it entered a Final Partition Judgment adopting Britton's proposed judgment and directing Brown to select one of the two parcels. Brown "conditional[ly] and involuntar[il]y" accepted Parcel B, then appealed the Final Partition Judgment.

On appeal, the Court determined that it could not assess whether the Final Partition Judgment was supported by substantial credible evidence or whether the district court made a mistake in entering the judgment because none of the documents in the record were admitted into evidence. The Court noted that, while district courts have the right to "confirm, change, modify, or set aside" the referees' report, "a district court commits error if it confirms a report not supported by 'substantial evidence.'"

The Court held that Brown met the necessary threshold of objection to the referees' report to mandate an evidentiary hearing, and the district court violated her right to due process under Montana law by denying her such a hearing. The Court relied on established partition law from other jurisdictions to determine that Brown's objections were sufficient to place the referees' final report in legitimate dispute. It used this nonbinding law to decide that denial of an evidentiary hearing after sufficient objection constituted a violation of due process generally. It then specifically held that the district court denied Brown due process under Montana law. The Court reversed and remanded the case for an evidentiary hearing.

In a partition action, district courts generally have great flexibility in fashioning appropriate relief, but the Montana practitioner should be aware that basic evidentiary standards and due process rights restrain that discretion. Under Montana law, a party has the right to have substantiated claims weighed by the district court in a hearing, and a final partition judgment can be reversed for error if no substantial evidentiary record exists to support the district court's position.

**Baker, J.; McGrath C.J.; Cotter, J.; Wheat, J.; Rice, J.**

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