

372 Mont. 267
Supreme Court of Montana.

CR **WEAVER**, Plaintiff,

v.

TRI-COUNTY IMPLEMENT, INC., and Tami
Christensen, Defendants.

Tri-County Implement, Inc. and Tami
Christensen, Counter Plaintiffs, Third Party
Plaintiffs and Appellees,

v.

CR **Weaver**, Counter Defendant and Appellant.
Mikart Transport, LLC and Michael Robert Smith,
Third Party Defendants.

No. DA 13-0099. | Submitted on Briefs Sept. 26,
2013. | Decided Oct. 22, 2013.

Synopsis

Background: Member or manager of limited liability company (LLC) brought action against servicer that performed maintenance on vehicle under account of LLC, alleging that payments made to servicer were misapplied and that vehicle was being wrongfully held by servicer. The District Court, Seventh Judicial District, Richland County, Katherine M. Bidegaray, P.J., granted summary judgment in favor of servicer and imposed joint and several liability on member or manager in his individual capacity. Member or manager appealed.

[Holding:] The Supreme Court, Jim Rice, J., held that member or manager did not engage in wrongful conduct that imposed personal liability.

Reversed and remanded.

West Headnotes (6)

[1] Appeal and Error
☛Cases Triable in Appellate Court

The Supreme Court reviews de novo a district court's ruling on a motion for summary judgment, performing the same analysis as the district court. Rules Civ.Proc., Rule 56.

Cases that cite this headnote

[2] Judgment
☛Absence of issue of fact

Summary judgment is appropriate only if the moving party demonstrates the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. Rules Civ.Proc., Rule 56.

Cases that cite this headnote

[3] Appeal and Error
☛Extent of Review Dependent on Nature of Decision Appealed from

A district court's determination that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law is a legal conclusion that the Supreme Court reviews for correctness. Rules Civ.Proc., Rule 56.

Cases that cite this headnote

[4] Corporations and Business Organizations
☛Liability for acts and debts of company

Member or manager of limited liability company (LLC) did not engage in conduct that would have given rise to contract or tort liability if he were acting in individual capacity, and therefore member or manager was not jointly and severally liable for obligations incurred on behalf of LLC pursuant to service contract for maintenance of automobile owned by member or manager, where, although title to vehicle was in name of member or manager, contract for work performed was solely between servicer and LLC, and allegation that other member or manager may have been unable to pay the debts of the LLC did not amount to wrongful conduct that imposed liability on member or manager. MCA 35-8-304(1).

Cases that cite this headnote

[5] **Corporations and Business Organizations**

- ➔Liability for acts and debts of company
- Corporations and Business Organizations**
- ➔Rights, duties, and liabilities

Limited liability companies (LLC) provide their members and managers with a corporate-styled liability shield. MCA 35–8–101.

Cases that cite this headnote

[6] **Corporations and Business Organizations**

- ➔Liability for acts and debts of company

A limited liability company’s (LLC) liability shield is not absolute and does not provide immunity to a member for his own wrongful conduct. MCA 35–8–304(1).

Cases that cite this headnote

Attorneys and Law Firms

**809 For Appellant: William L. Managhan; Managhan Law Firm; Kalispell, Montana.

For Appellees: Ben T. Sather, Eric E. Holm; Sather & Holm, PLLC; Billings, Montana.

Opinion

Justice JIM RICE delivered the Opinion of the Court.

*268 ¶ 1 C.R. **Weaver** (**Weaver**) appeals from the Montana Seventh Judicial District Court’s order granting summary judgment in favor of **Tri-County** Implement, Inc. (**Tri-County**) and Tami Christensen,¹ and imposing joint and several liability on **Weaver** in his individual capacity. We reverse the imposition of personal liability on **Weaver**, addressing the following issue:

¶ 2 *Did the District Court err in holding **Weaver** jointly and severally liable for the obligations incurred on behalf*

of Mikart Transport, LLC?

FACTUAL AND PROCEDURAL BACKGROUND

¶ 3 In January of 2011 **Weaver** formed Mikart Transport, LLC (Mikart), a domestic limited liability company. At that time, the Articles of Organization named **Weaver** and Michael Smith (Smith) as members or managers. Smith was named as Mikart’s registered agent.

¶ 4 **Tri-County** is a small business located in Sidney, specializing in sales and service of farm and industrial machinery, trucks, and trailers. During March of 2011, Smith submitted a credit application *269 with **Tri-County** to open a line of credit on behalf of Mikart, which **Tri-County** approved. Smith represented on the credit application that he was the “owner” of Mikart. The application contained a provision requiring reimbursement of attorney fees and costs incurred by **Tri-County** in any court action necessary to collect amounts owed.

¶ 5 On March 31, 2011, Smith requested that **Tri-County** perform service work to a Freightliner truck under Mikart’s account. **Tri-County** provided parts, service, and labor **810 in the amount of \$12,252.74. Payments totaling \$6,980.84 were made toward this debt, leaving \$5,271.90 unpaid.

¶ 6 On April 19, 2011, Smith requested that **Tri-County** mount a tank on a 1991 Volvo semi-truck under Mikart’s account. **Tri-County** accepted the project and created a service order. It ordered the specified tank and outsourced the necessary welding work to Niehenke Welding, Inc. **Tri-County** issued an invoice for the work performed on the Volvo in the amount of \$1,086.00, which was not paid. As a result, **Tri-County** refused to release the Volvo from its possession pursuant to its asserted agisters’ lien on the vehicle. See § 71–3–1201(2)(a), MCA. The Volvo is titled in **Weaver’s** name.

¶ 7 Proceeding *pro se*, **Weaver** filed a complaint against **Tri-County** on December 12, 2011, alleging that payments he and his daughter had made to **Tri-County** were misapplied and that his Volvo was being wrongfully held.² He argued that in so doing, **Tri-County** had committed “fraud, misrepresentation, unethical business practices and violations of good faith and fair dealings.” In response, **Tri-County** filed an answer and counterclaim against **Weaver**, as well as third-party complaints against Mikart and Smith, demanding payment in full for the work that had been performed on the Freightliner and Volvo. **Weaver** then filed an answer to the counterclaim and an

answer to the third-party complaint against Mikart. The District Court struck the latter on procedural grounds and also noted that **Weaver** was not licensed to practice law and could not personally represent Mikart. Smith failed to answer or otherwise appear, so the District Court entered default judgment against him.

¶ 8 **Tri-County** moved for summary judgment on its counterclaim *270 against **Weaver**, its third-party complaint against Mikart, and **Weaver's** complaint against **Tri-County**. The District Court granted summary judgment in favor of **Tri-County** on each count, finding that no dispute existed over the fact that Mikart incurred, and then failed to pay, the \$6,357.90 owing to **Tri-County** for the work it had performed. Consequently, **Tri-County** had claimed a valid agisters' lien against the Volvo and was entitled to compensation for the Freightliner pursuant to the credit agreement. The District Court entered judgment against Mikart, ordering it to pay \$1,086.00 for work performed on the Volvo and \$5,271.90 for parts, service, and work performed on the Freightliner. The District Court further awarded **Tri-County** \$21,180.34 in attorney fees and costs based on the fee provision of the credit application. Finally, the District Court held Mikart, Smith, and **Weaver** jointly and severally liable for these amounts. **Weaver** appeals only the District Court's imposition of personal liability on him.

STANDARD OF REVIEW

[1] [2] [3] ¶ 9 We review de novo a district court's ruling on a motion for summary judgment, performing the same analysis as the district court pursuant to Rule 56 of the Montana Rules of Civil Procedure. *Lorang v. Fortis Ins. Co.*, 2008 MT 252, ¶ 36, 345 Mont. 12, 192 P.3d 186. Summary judgment is appropriate only if the moving party demonstrates the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. *Turner v. Wells Fargo Bank, N.A.*, 2012 MT 213, ¶ 11, 366 Mont. 285, 291 P.3d 1082. A district court's determination that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law is a legal conclusion that we review for correctness. *Turner*, ¶ 11.

DISCUSSION

¶ 10 *Did the District Court err in holding **Weaver** jointly and severally liable for the obligations incurred on behalf Mikart Transport, LLC?*

811 [4] ¶ 11 **Weaver does not challenge the District Court's determination that no genuine issue of material fact exists that would preclude summary judgment. Rather, **Weaver** maintains that "[t]he District Court erred by ordering [him] jointly and severally liable with Smith and Mikart" because he never assumed legal responsibility for their actions. He argues that, absent some proof of his own wrongdoing, he cannot be held liable under a service contract that "(1) is in someone else's name; *271 (2) was applied for by someone else; and (3) involved work on two vehicles that was requested by someone else."

[5] [6] ¶ 12 Montana's statute governing the liability of members or managers of a limited liability company (LLC) to third parties provides in pertinent part:

[A] person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

Section 35–8–304(1), MCA. "[T]his Court has recognized [LLCs] as legal entities distinct from their members, with obligations separate from their members." *White v. Longley*, 2010 MT 254, ¶ 34, 358 Mont. 268, 244 P.3d 753 (citing *Ioerger v. Reiner*, 2005 MT 155, ¶ 20, 327 Mont. 424, 114 P.3d 1028). LLCs provide their members and managers with "a corporate-styled liability shield...." *White*, ¶ 34 (citing § 35–8–101, MCA, *Official Comments*). However, this liability shield is not absolute and does not provide immunity to a member for his own wrongful conduct. *White*, ¶ 37.

¶ 13 In *White*, Steve and Donna White purchased property near Troy with the intent to build a retirement home thereon. *White*, ¶ 2. The Whites contacted Tom Longley in Washington State about performing the construction work, which he agreed to do in his capacity as general manager of Castle Homes, LLC. *White*, ¶ 2. From the outset, Longley attempted to deceive the Whites about his credentials, his experience, and the work he would perform, eventually resulting in the construction of a home "so substandard that it could not reasonably be repaired" and that "the Whites would have to tear down...." *White*, ¶¶

26–27, 51. We noted:

It is clear from the facts that Longley knowingly made any number of material representations about the Whites' house project that induced them to trust him and to invest substantial sums of money with him. Longley knew exactly what was going on. He knew the limits of his own qualifications and abilities. He knew the deficiencies in the project because they were obvious to any experienced contractor and because his crew foreman Ellis told him. There is abundant evidence to support the District Court's findings and conclusions regarding constructive fraud.

White, ¶ 29. The district court held Longley jointly and severally liable *272 with Castle Homes, LLC for damages incurred by the Whites throughout the disastrous building process. *White*, ¶¶ 38–39.

¶ 14 On appeal, Longley argued that Montana's Limited Liability Company Act provides LLC members complete liability protection for actions taken on behalf of that LLC. *White*, ¶ 32. We summarily rejected Longley's position, explaining that Montana law "does not offer blanket protection from liability to a member of an LLC for the member's own conduct..." *White*, ¶ 37. Rather, § 35–8–304, MCA, "allow[s] personal liability against a member or manager of an LLC based upon contract or tort if the member or manager would be liable if acting in an individual capacity." *White*, ¶ 37 (citing § 35–8–304, MCA, *Official Comments*). We concluded that Longley's individual misconduct subjected him to liability under both contract and tort, which "remove[d] any protection from liability that Longley might otherwise have based upon the organization of Castle Homes as a limited liability company." *White*, ¶ 38.

¶ 15 Turning to the case before us, our holding in *White* establishes that **Weaver's** liability as a member depends on whether he engaged in conduct that would give rise to **812 contract or tort liability if he were acting in his individual capacity. In other words, did **Weaver** personally breach a contract obligation or commit a tort with regard to **Tri-County**? As the Official Comments to § 35–8–304, MCA, explain, "[a] member or manager, as an agent of the company, is not liable for the debts, obligations, and liabilities of the company simply because of the agency."

¶ 16 The District Court concluded that "**Weaver** is not afforded the protections of § 35–8–304, MCA" based on the following facts: "the Volvo at issue was owned by **Weaver**[:]; **Weaver** failed to make payment either on his own behalf or on behalf of Mikart Transport, LCC[:]; [and] **Weaver** personally brought this action against **Tri-County**." **Tri-County** offers these points from the District Court's analysis and adds that **Weaver** is personally liable because both **Weaver** and Smith entered into transactions on Mikart's behalf; **Weaver** knew about and never objected to any of the transactions; and **Weaver** personally arranged some payments but then refused to make others.

¶ 17 Even taking these factual assertions as true, they do not establish a basis for imposing individual liability on **Weaver** in contract or tort. Turning first to a contract analysis, **Weaver** correctly argues that the agreements in this case for the work performed on the two trucks were solely between **Tri-County** and Mikart. **Weaver** did not guarantee Mikart's payments or make any other promises. "A contract *273 is an agreement to do or not to do a certain thing." Section 28–2–101, MCA. Without an agreement between **Weaver** and **Tri-County** regarding the vehicle repairs, individual liability for breach of contract by **Weaver** does not lie. It is immaterial that **Weaver** held title to the Volvo, sued **Tri-County**, knew about Mikart's transactions and failed to object, or arranged to make some payments to **Tri-County**. Again, an LLC's "obligations are separate from its members." *Ioerger*, ¶ 20. It is critical here to distinguish between Mikart's failure to pay its own debts on the one hand, and **Weaver's** failure to pay Mikart's debts, on the other, when he had no contractual obligation to **Tri-County** to do so. Conflating the two would eviscerate the protection afforded by Montana's Limited Liability Company Act and render the LLC business form superfluous.

¶ 18 Turning to our tort analysis, **Tri-County** suggests that failing to impose individual liability on **Weaver** "would allow an agent to hide behind the LLC so that a victim of wrongful conduct is deprived of compensation if the LLC is insolvent, which is likely the case with Mikart Transport." The key words here are "wrongful conduct." The allegation that Mikart may be unable to pay its debts does not, by itself, amount to wrongful conduct that imposes liability on **Weaver**. As with the contract analysis, it is also immaterial that **Weaver** held title to the Volvo, sued **Tri-County**, knew about Mikart's transactions and failed to object, or arranged for some payments to be made. Unlike the constructive fraud claim at issue in *White*, **Weaver's** conduct in this case does not constitute an actionable tort. If a member or manager operates an LLC as an empty shell to perpetuate fraud and avoid personal responsibility, that situation would be different, but those

are not the facts here. Apart from agency theory, which § 35-8-304, MCA, clearly rejects as a basis of member or manager liability, there is no basis on which to hold **Weaver** individually liable for the obligations of Mikart to **Tri-County**.

¶ 19 We conclude that the District Court erred in holding **Weaver** jointly and severally liable with Smith and Mikart for the work performed on the two vehicles, and for the attorney fees and costs assessed pursuant to the fee provision of the credit application, and therefore reverse the same. The remainder of the judgment is unaffected by reversal of this issue. We remand for entry of an amended

judgment consistent herewith.

We concur: MIKE McGRATH, C.J., BETH BAKER, PATRICIA COTTER and BRIAN MORRIS.

All Citations

372 Mont. 267, 311 P.3d 808, 2013 MT 309

Footnotes

- 1 Tami Christensen is an owner of **Tri-County** and performs its bookkeeping. She is named in the pleadings as a co-defendant, co-counter plaintiff, and co-third party plaintiff with **Tri-County**. References herein to "**Tri-County**" include Christensen.
- 2 **Weaver** initially claimed that an agreement had been reached between his daughter and **Tri-County** requiring application of payments he had arranged to the Volvo bill. However, the District Court concluded that **Weaver** had failed to meet his responsive burden on summary judgment to lay a factual foundation for his theories, and we conclude this claim was properly rejected for this reason.