

SUPREME COURT OF MONTANA

Gruba v. Montana Public Service Commission

2016 MT 131N (2016) · No. DA 15-0736 · Decided May 31, 2016

SUMMARY

The Montana Supreme Court affirmed dismissal of the appellants’ petition seeking interlocutory review of Montana Public Service Commission rulings concerning street-lighting tariff rates and related procedural matters. The Court held that the appellants failed to show that review of a final agency decision would not provide an adequate remedy under Section 2-4-701, MCA. The memorandum opinion was designated noncitable under the Montana Supreme Court’s Internal Operating Rules.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Jim Rice; Mike McGrath; Laurie McKinnon; Beth Baker; Patricia Cotter
JURISDICTION	Montana
DECIDED	May 31, 2016
DOCKET	DA 15-0736
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the First Judicial District Court's dismissal under Montana Rules of Civil Procedure 12(b)(1) and 12(b)(6) of a petition seeking review of Montana Public Service Commission actions, declaratory relief, compelled performance, and a temporary rate reduction.
STANDARD OF REVIEW	De novo review of the District Court's ruling on the Rule 12(b)(6) motion to dismiss; the appellants bore a heavy burden to show that review of a final agency decision would not provide an adequate remedy.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion; noncitable under Section I, Paragraph 3(c) of the Montana Supreme Court Internal Operating Rules.
PARTIES	James T. Gruba, Elizabeth Gruba, Leo G. Barsanti, Jeanne R. Barsanti v. Montana Public Service Commission

TOPICS

judicial review of agency action

interlocutory appeal

administrative law

motions to dismiss

appellate procedure

PRACTICE AREAS

administrative law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the District Court erred by dismissing the petition seeking review of the Montana Public Service Commission's preliminary, procedural, or intermediate actions.
2. Whether the appellants established under section 2-4-701, MCA, that review of a final agency decision would not provide an adequate remedy, thereby permitting interlocutory judicial review.

HOLDINGS

1. Interlocutory judicial review under section 2-4-701, MCA, was not appropriate because the appellants failed to demonstrate that review of a final agency decision would not provide an adequate remedy.

KEY QUOTATIONS

“As a rule, “judicial review will generally only be available to a person aggrieved by a final agency decision.”” (¶ 3)

“A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.” (¶ 3)

“Upon our de novo review, we find that the Appellants did not meet their burden to establish that such an interlocutory appeal is appropriate.” (¶ 5)

FACTUAL BACKGROUND

The appellants were plaintiffs in a proceeding alleging that Northwestern Energy charged unreasonable and unjustly discriminatory street-lighting tariff rates to Billings and Montana consumers. While the administrative proceeding remained ongoing, the Montana Public Service Commission denied several of the appellants' motions, including motions concerning class certification and amendment of testimony. The Commission had not issued a final ruling when the appellants sought judicial review and related relief in District Court.

PROCEDURAL HISTORY

The appellants challenged Northwestern Energy's street-lighting tariff rates in proceedings before the Montana Public Service Commission. After the Commission denied several motions, including motions concerning class certification and amendment of testimony, the appellants filed a petition in the First Judicial District Court. The District Court dismissed the petition and denied interlocutory review under section 2-4-701, MCA. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Williamson v. Mont. PSC, 2012 MT 32, 364 Mont. 128, 272 P.3d 71
- Wilson v. Dep't of Pub. Serv. Regulation, 260 Mont. 167, 172, 858 P.2d 368, 371 (1993)
- Kingsbury Ditch Co. v. Dep't of Natural Res. & Conservation, 223 Mont. 379, 382, 725 P.2d 1209, 1210 (1986)
- Doty v. Mont. Comm'r of Political Practices, 2007 MT 341, ¶ 9, 340 Mont. 276, 173 P.3d 700
- State v. Hall, 2006 MT 37, ¶ 10, 331 Mont. 171, 130 P.3d 601

OPINION

PER CURIAM.

May 31 2016 DA 15-0736 Case Number: DA 15-0736 IN THE SUPREME COURT OF THE STATE OF MONTANA 2016 MT 131N JAMES T. & ELIZABETH GRUBA and LEO G. & JEANNE R. BARSANTI, Petitioners and Appellants, v. MONTANA PUBLIC SERVICE COMMISSION, Respondent and Appellee, and NORTHWESTERN ENERGY, Intervenor. APPEAL FROM: District Court of the First Judicial District, In and For the County of Lewis and Clark, Cause No. BDV 2015-648 Honorable Jeffrey M. Sherlock, Presiding Judge COUNSEL OF RECORD: For Appellants: Russell L. Doty, Attorney at Law; Greeley, Colorado For Appellees: Laura J. Farkas, Montana Public Service Commission; Helena, Montana For Intervenor: Sarah Norcott, Northwestern Energy; Helena, Montana Submitted on Briefs: April 27, 2016 Decided: May 31, 2016 Filed: _____ Clerk 2 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 and 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 James and Elizabeth Gruba and Leo and Jeanne Barsanti (Appellants) are the currently-named plaintiffs in this case.

The original complaint, including additional plaintiffs, was filed in 2010 before the Montana Public Service Commission (PSC), alleging that Northwestern Energy is overcharging Billings and Montana consumers of street lighting services by charging unreasonable and unjustly discriminatory tariff rates. See Williamson v. Mont. PSC, 2012 MT 32, 364 Mont. 128, 272 P.3d 71.

After the PSC denied several of Appellants' motions, Appellants filed a Petition for Review of Administrative Agency Decisions, Complaint in Request for Declaratory Judgment, Action to

Compel Performance, and Request for a Temporary Rate Reduction (the Petition) in the First Judicial District Court, Lewis and Clark County.

The PSC moved to dismiss the Petition pursuant to M. R. Civ. P. 12(b)(1) and (6), and on November 2, 2015, the District Court granted the motion. Appellants appeal, raising and primarily arguing the same issues they sought to raise in the District Court, essentially asking this Court to consider the merits of those issues.

We address the single issue of whether the District 3 Court erred when it dismissed the Petition, and denied interlocutory review of the agency's actions under § 2-4-701, MCA. ¶3 As a rule, "judicial review will generally only be available to a person aggrieved by a final agency decision." *Wilson v. Dep't of Pub. Serv. Regulation*, 260 Mont. 167, 172, 858 P.2d 368, 371 (1993) (emphasis in original).

However, "[a] preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy." Section 2-4-701, MCA. We have previously stated that "[p]ersons seeking immediate review of interlocutory administrative agency action or rulings under § 2-4-701, MCA, continue to bear a heavy burden to demonstrate that judicial review of the final agency decision would not provide an adequate remedy." *Wilson*, 260 Mont. at 172, 858 P.2d at 371 (emphasis added).

In dismissing the Petition, the District Court noted that "Petitioners are actively involved in extensive proceedings in front of the PSC on various procedural issues[.]" and "it is clear that the PSC has not issued a final ruling." ¶4 Appellants argue "that the District Court is required by law" to grant judicial review of the PSC's denial of class certification, citing *M. R. Civ.*

P. 23(f), and of the PSC's denial of the motion to amend testimony. They assert that "[a]ny PSC final agency decision, which is devoid of consideration of [Appellants'] complete testimony, cannot and will not provide an adequate remedy because there will be no record of massive statewide overcharges, only of small overcharges in three or four street improvement and lighting districts...." 4 ¶5 However, while a preliminary, procedural, or intermediate agency ruling may be reviewed if review of a final agency decision would not provide an adequate remedy, there has been no such showing in this case, other than Appellants' strongly-worded assertion.

See *Kingsbury Ditch Co. v. Dep't of Natural Res. & Conservation*, 223 Mont. 379, 382, 725 P.2d 1209, 1210 (1986) ("There has been no showing in this case that a review of the final agency action would provide an inadequate remedy.").

The District Court aptly stated, "This Court finds no reason to inject itself into an on-going administrative proceeding." Upon our de novo review, we find that the Appellants did not meet their burden to establish that such an interlocutory appeal is appropriate. See *Doty v. Mont.*

Comm'r of Political Practices, 2007 MT 341, ¶ 9, 340 Mont. 276, 173 P.3d 700 (“We review a district court’s ruling on a M. R. Civ.

P. 12(b)(6) motion to dismiss de novo.”) (citing State v. Hall, 2006 MT 37, ¶ 10, 331 Mont. 171, 130 P.3d 601). ¶6 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions.

In the opinion of the Court, the case presents a question controlled by settled law, which the District Court correctly applied. ¶7 Affirmed. /S/ JIM RICE 5 We concur: /S/ MIKE McGRATH /S/ LAURIE McKINNON /S/ BETH BAKER /S/ PATRICIA COTTER 6