

SUPREME COURT OF MONTANA

Bostwick Properties, Inc. v. Montana Department of Natural Resources & Conservation, 2009 MT 181, 351 Mont. 26

208 P.3d 868 (2009) · No. DA 08-0248 · Decided May 21, 2009

SUMMARY

The Supreme Court of Montana reversed a district court's writ of mandamus directing the Montana Department of Natural Resources and Conservation to issue Bostwick Properties a water-use permit. The Court held that mandamus could compel the agency to act on the application but could not compel issuance of the permit because determining whether the statutory permit criteria were satisfied involved agency discretion. The matter was remanded, with Bostwick given an opportunity to request a hearing on the agency's statement of opinion denying the application.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Patricia O. Cotter; Mike McGrath; James C. Nelson; W. William Leaphart; Brian Morris
JURISDICTION	Montana
DECIDED	May 21, 2009
DOCKET	DA 08-0248
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Montana Department of Natural Resources and Conservation appealed the Eighteenth Judicial District Court's order granting Bostwick Properties a writ of mandate directing the Department to issue a water-use permit.
STANDARD OF REVIEW	The decision to issue or deny a writ of mandamus is a conclusion of law reviewed for correctness.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	Montana Department of Natural Resources and Conservation v. Bostwick Properties, Inc.

TOPICS

- writ of certiorari
- administrative law
- agency adjudication
- statutory interpretation
- appellate procedure

PRACTICE AREAS

administrative law

water rights

mandamus

appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court erred by granting a writ of mandate directing DNRC to issue Bostwick's water-use permit.
2. Whether DNRC had a clear, ministerial legal duty to issue the permit after the statutory processing deadline elapsed and the application had been deemed correct and complete.
3. Whether mandamus could be used to compel issuance of the permit after DNRC had issued a statement of opinion concluding that Bostwick failed to satisfy required statutory criteria.

HOLDINGS

1. A writ of mandate cannot be used to correct or undo an action that has already been taken; therefore, once DNRC issued its statement of opinion, mandamus was not an appropriate remedy to compel issuance of the permit.
2. DNRC did not have a clear legal or ministerial duty to issue the permit merely because the application was deemed correct and complete, objections were resolved, and the statutory deadline had expired.
3. DNRC had a clear legal duty to process the application under the statutory procedures and, after issuing its statement of opinion, to provide Bostwick an opportunity to be heard and timely process the application; mandamus could compel agency action but not dictate issuance of the permit.

KEY QUOTATIONS

"A writ of mandate will not lie to correct or undo an action already taken. An action already done cannot be undone by mandamus, however erroneous it may have been." (873)

"But the issuance of the water permit itself does not become a clear, legal duty until Bostwick proves, by a preponderance of the evidence, that the required criteria have been satisfied." (874)

FACTUAL BACKGROUND

Bostwick sought a water-use permit to appropriate groundwater from an aquifer for the Lazy J South subdivision. DNRC determined that Bostwick's application was correct and complete, but failed to act within the statutory deadline and did not request an extension. After Bostwick sought mandamus, DNRC issued a statement of opinion concluding that Bostwick had not proved the statutory criteria concerning water availability and protection of prior appropriators, although it had proved other criteria.

PROCEDURAL HISTORY

Bostwick applied to DNRC for a water-use permit for a subdivision. After DNRC failed to act within the statutory processing period, Bostwick sought mandamus in the District Court. DNRC issued a statement of opinion denying that Bostwick had established all statutory permit criteria while the mandamus proceeding was

pending. The District Court nevertheless ordered DNRC to issue the permit and awarded fees and costs, and DNRC appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The writ of mandate is reversed and the matter is remanded to the District Court. Bostwick has 30 days after receipt of the decision to request a hearing with DNRC on its application consistent with Mont. Code Ann. § 85-2-310(3), and DNRC must timely process the application under the applicable statutory procedures.

CASES CITED

- Belgrade Education Association v. Belgrade School District No. 44, 2004 MT 318, 324 Mont. 50, 102 P.3d 517
- Smith v. County of Missoula, 1999 MT 330, 297 Mont. 368, 992 P.2d 834
- Beasley v. Flathead County Board of Adjustments, 2009 MT 120, 350 Mont. 171, 205 P.3d 812
- State ex rel. Popham v. Hamilton City Council, 185 Mont. 26, 604 P.2d 312 (1979)
- Confederated Salish and Kootenai Tribes v. Clinch, 2007 MT 63, 336 Mont. 302, 158 P.3d 377
- Paradise Rainbows v. Fish and Game Commission, 148 Mont. 412, 421 P.2d 717 (1966)
- State v. Scarborough, 2000 MT 301, 302 Mont. 350, 14 P.3d 1202
- McCormick on Evidence § 339 (4th ed. 1992)

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