

SUPREME COURT OF MONTANA

Mark J. Fennessy v. Linda Dorrington

306 Mont. 307 (Mont. 2001) · No. No. 00-842 · Decided October 4, 2001

SUMMARY

The Montana Supreme Court reviewed the denial of Mark Fennessy's motion to reconsider dismissal of his application for writs of prohibition or mandamus against Libby City Judge Linda Dorrington. The court held that the district court abused its discretion by ruling before Fennessy's response period had expired and without providing the required opportunity for oral argument. The court reversed the dismissal and denial of reconsideration and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Terry N. Triewelier; Chief Justice Karla M. Gray; Justice W. William Leaphart; Justice Patricia Cotter; Justice James C. Nelson
JURISDICTION	Montana
DECIDED	October 4, 2001
DOCKET	No. 00-842
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Fennessy appealed the Montana district court's denial of his motion to reconsider an order granting Dorrington's motion to dismiss his application for a writ of prohibition or, alternatively, mandamus.
STANDARD OF REVIEW	The denial of a Rule 60(b)(6) motion is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential state appellate authority.
PARTIES	Mark J. Fennessy v. Linda Dorrington

TOPICS

- motion for reconsideration
- motions to dismiss
- civil procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- Civil procedure
- Appellate procedure
- Writs and extraordinary remedies
- Municipal law

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Fennessy's motion to reconsider after dismissing his application without providing him an opportunity to review and respond to the motion to dismiss.
2. Whether the district court failed to comply with Uniform District Court Rule 2 and Nineteenth Judicial District Court Rule 40(D).

HOLDINGS

1. The district court abused its discretion by refusing to reconsider its dismissal order when the record showed that Fennessy had not received the motion to dismiss and was unable to review or respond to it.
2. The district court abused its discretion by failing to follow Nineteenth Judicial District Court Rule 40(D), which made oral argument mandatory for motions under Rules 52, 56, 59, and 60 unless expressly waived by the parties.

KEY QUOTATIONS

“Fennessy’s time for responding had not yet expired and without an actual copy of the motion to dismiss, he had no way of knowing what response was necessary.” (¶ 11)

“We conclude that the District Court abused its discretion by failing to follow Uniform District Court Rule 2 and Nineteenth Judicial District Court Rule 40(D).” (¶ 14)

FACTUAL BACKGROUND

Libby City Judge Linda Dorrington issued two contempt citations to Libby City Attorney Mark Fennessy and ordered him to appear and show cause why contempt should not be imposed. Fennessy sought a writ of prohibition or mandamus, arguing that Dorrington lacked jurisdiction and could not act simultaneously as complaining witness, prosecutor, and judge. Dorrington filed a motion to dismiss, but Fennessy asserted that he had not received it and therefore had no opportunity to review or answer it before the district court granted dismissal.

PROCEDURAL HISTORY

Fennessy sought to stay city-court contempt proceedings through a district-court application for writ relief. The district court initially granted the application to the extent it ordered Dorrington to show cause, but later granted Dorrington's motion to dismiss before Fennessy had received and responded to the motion. The district court denied Fennessy's motion to reconsider, and the Montana Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the orders dismissing Fennessy's application and denying his motion to reconsider, and remand to the district court for further proceedings.

CASES CITED

- Hall v. Heckerman, 2000 MT 300, ¶ 12, 302 Mont. 345, 15 P.3d 869
- In re Adoption of C.C.L.B., 2001 MT 66, ¶ 45, 305 Mont. 22, 22 P.3d 646
- Steele v. McGregor, 1998 MT 85, ¶ 9, 288 Mont. 238, 956 P.2d 1364
- Varco-Pruden v. Nelson, 181 Mont. 252, 593 P.2d 48 (1979)
- Buttrell v. McBride Land & Livestock, 170 Mont. 296, 298, 553 P.2d 407, 408 (1976)
- General Constructors, Inc. v. Chewculator, Inc., 2001 MT 54, ¶ 17, 304 Mont. 319, 21 P.3d 604
- Sandman v. Farmers Ins. Exchange, 1998 MT 286, ¶ 23, 291 Mont. 456, 969 P.2d 277
- State ex rel. Ins. Fund v. Berg, 279 Mont. 161, 174, 927 P.2d 975, 983 (1996)
- Johansen v. State, Department of Natural Resources, 1998 MT 51, ¶ 24, 288 Mont. 39, 955 P.2d 653

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