

SUPREME COURT OF MONTANA

Hoehne v. Sherrodd, Inc., 205 Mont. 365

668 P.2d 232 (1983) · No. No. 82-510 · Decided August 18, 1983

SUMMARY

The Montana Supreme Court affirmed the dismissal of Sherrodd, Inc.'s petition for judicial review of a Department of Labor and Industry decision awarding Percy Hoehne overtime compensation and a penalty. The court held that the Department had jurisdiction over the wage claim despite Hoehne's occasional work in North Dakota because the parties and employer were based in Montana and federal and state wage laws applied. The court also held that an employee's failure to assert overtime rights did not waive or estop the statutory claim because overtime protections serve public policy.

CASE DETAILS

|                       |                                                                                                                                                                                                                             |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Montana                                                                                                                                                                                                    |
| WRITING FOR THE COURT | HASWELL, Chief Justice; Harrison; Shea; Gulbrandson; Weber                                                                                                                                                                  |
| JURISDICTION          | Montana                                                                                                                                                                                                                     |
| DECIDED               | August 18, 1983                                                                                                                                                                                                             |
| DOCKET                | No. 82-510                                                                                                                                                                                                                  |
| DISPOSITION           | affirmed                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Sherrodd appealed the Yellowstone County District Court's dismissal of its petition for judicial review of a Montana Department of Labor and Industry ruling awarding Hoehne overtime compensation and a statutory penalty. |
| STANDARD OF REVIEW    | The district court reviewed the Department's ruling on the agency record; the Montana Supreme Court reviewed the jurisdictional and waiver issues presented on appeal.                                                      |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                              |
| PARTIES               | Sherrodd, Inc. v. Percy Hoehne, Montana Department of Labor and Industry                                                                                                                                                    |

TOPICS

- wage and hour
- flsa
- administrative law
- judicial review of agency action
- civil procedure

## PRACTICE AREAS

employment law

administrative law

wage and hour

## QUESTIONS PRESENTED

1. Whether the Montana Department of Labor and Industry had jurisdiction to adjudicate Hoehne's wage claim when he sometimes performed work in North Dakota.
2. Whether Hoehne was estopped from claiming overtime compensation because he failed to report the overtime hours or inform Sherrodd that he expected overtime pay.

## HOLDINGS

1. The Montana Department of Labor and Industry had jurisdiction to adjudicate Hoehne's claim because the employee and employer were Montana residents, the employer's principal place of business was in Montana, the employment relationship was connected to Montana, and the Department had authority to enforce Montana wage law and the Fair Labor Standards Act.
2. An employee's failure to assert the right to overtime compensation does not constitute waiver or estoppel because overtime rights are statutory public rights enacted to protect workers and the public, and cannot be privately waived.

## KEY QUOTATIONS

*"We hold that under the traditional notions of jurisdiction the Department properly ruled on this claim."* (at 234)

*"Consequently, we hold that one's failure to assert such rights does not constitute waiver."* (at 235)

## FACTUAL BACKGROUND

Sherrodd, a Montana corporation with its principal place of business in Montana, employed Percy Hoehne, a Montana resident, from May 1981 through January 1982 to operate heavy equipment for \$10 per hour. Hoehne sometimes worked in North Dakota, but Sherrodd kept no records showing the amount of work performed in either state. The Department found that Hoehne had worked 349 unpaid overtime hours and awarded overtime compensation plus a statutory penalty.

## PROCEDURAL HISTORY

Hoehne filed a wage claim with the Montana Department of Labor and Industry. After a hearing, the Department found that he had worked 349 overtime hours and awarded him \$1,745 in overtime compensation and a \$1,745 penalty. Sherrodd petitioned the Yellowstone County District Court for judicial review, but the court dismissed the amended petition on the agency record. The Montana Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- State v. Holman Aviation Co., 176 Mont. 31, 575 P.2d 923 (1978)
- Earl Clack Co. v. Staunton, 105 Mont. 375, 72 P.2d 1022 (1937)
- Anaconda Copper Mining Co. v. Ravalli County, 56 Mont. 530, 186 P. 332 (1919)
- Shea v. North-Butte Mining Co., 55 Mont. 522, 179 P. 499 (1919)
- Kopischke v. First Continental Corp., 610 P.2d 668, 37 St. Rep. 437 (Mont. 1980)
- Wirtz v. Malthor, Inc., 391 F.2d 1 (9th Cir. 1968)
- State ex rel. Neiss v. District Court, 162 Mont. 324, 511 P.2d 979 (1973)
- Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, 65 S. Ct. 895, 89 L. Ed. 1296 (1945)

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