

SUPREME COURT OF THE STATE OF MONTANA

C. Cox v. Rodney E. Arnold, Claude Burlingame, Rocky Mountain Bank of Plains, and Russell B. Icenoggle

2001 MT 239N (Mont. 2001) · No. No. 99-609 · Decided December 4, 2001

SUMMARY

The Montana Supreme Court dismissed Cox's appeal from the dismissal of a complaint seeking to set aside a sheriff's sale of real property. The court held that the corporation holding title, rather than Cox individually, was the real party in interest, and that a non-attorney could not appeal on the corporation's behalf.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Chief Justice Karla M. Gray; W. William Leaphart; Terry N. Trieweiler; Patricia Cotter; Jim Rice
JURISDICTION	Montana
DECIDED	December 4, 2001
DOCKET	No. 99-609
DISPOSITION	dismissed
PROCEDURAL POSTURE	C. Cox appealed the Sanders County District Court's dismissal of his complaint seeking to set aside a sheriff's sale of real property.
STANDARD OF REVIEW	The court did not reach the merits of Cox's appellate issues because it dismissed the appeal for lack of standing and lack of authority to represent the corporation.
PRECEDENTIAL VALUE	Nonprecedential; the court expressly directed that the decision shall not be cited as precedent.
PARTIES	C. Cox v. Rodney E. Arnold, Claude Burlingame, Rocky Mountain Bank of Plains, Russell B. Icenoggle

TOPICS

- standing
- appellate procedure
- corporate law
- real estate
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Cox was the real party in interest entitled to challenge the sheriff's sale of property titled in the corporation's name.
2. Whether Cox, as a non-attorney, could prosecute an appeal on behalf of the corporation.

HOLDINGS

1. Cox was not the real party in interest because 1804, Inc., held legal title to the property and was therefore the proper party to assert the claim.
2. Cox could not prosecute the appeal on behalf of 1804, Inc. because a corporation may not appear or appeal through a non-attorney agent.

KEY QUOTATIONS

“Cox states five issues for appeal, but his lack of standing as a real party in interest precludes our consideration of any of those issues.” (¶ 2)

“Under the authority set forth above, 1804, Inc., not Cox, is the real party in interest in the underlying matter.” (¶ 6)

FACTUAL BACKGROUND

The real property sold at the sheriff's sale was titled in the name of 1804, Inc., a corporation of which Cox was a shareholder and president. Cox personally filed the complaint seeking to set aside the sale and personally pursued the appeal. Cox was not an attorney.

PROCEDURAL HISTORY

Cox filed a complaint in the District Court seeking to set aside a sheriff's sale based on alleged noncompliance with statutory procedural requirements. The District Court dismissed the complaint. The Montana Supreme Court dismissed the appeal because Cox was not the real party in interest and, as a non-attorney, could not represent the corporation on appeal.

DISPOSITION

dismissed

CASES CITED

- Kudloff v. City of Billings, 260 Mont. 371, 374, 860 P.2d 140, 142 (1993)
- Kondelik v. First Fidelity Bank of Glendive, 259 Mont. 446, 453-54, 857 P.2d 687, 692 (1993)
- Continental Realty, Inc. v. Gerry, 251 Mont. 150, 152, 822 P.2d 1083, 1085 (1991)

OPINION

Cox v. Arnold

2001 MT 239N

PER CURIAM.

file:///C:/Documents%20and%20Settings/cu1046/Desktop/opinions/99-609%20Opinion.htm No. 99-609

IN THE SUPREME COURT OF THE STATE OF MONTANA

2001 MT 239N

C. COX,

Plaintiff and Appellant, v.

RODNEY E. ARNOLD, CLAUDE BURLINGAME,

ROCKY MOUNTAIN BANK OF PLAINS, a

corporation, and RUSSELL B. ICENOGGLE, Defendants and Respondents. APPEAL FROM: District Court of the Twentieth Judicial District, In and for the County of Sanders, The Honorable Michael C. Prezeau, Judge presiding. COUNSEL OF RECORD: For Appellant: C. Cox, Pro Se, Plains, Montana For Respondents: Norman H. Grosfield, Attorney at Law, Helena, Montana (for Rodney E. Arnold) file:///C:/Documents%20and%20Settings/cu1046/Desktop/opinions/99-609%20Opinion.htm (1 of 3)3/23/2007 1:56:59 PM

file:///C:/Documents%20and%20Settings/cu1046/Desktop/opinions/99-609%20Opinion.htm

Daniel D. Johns; Crowley, Haughey, Hanson, Toole & Dietrich, Kalispell, Montana (for Rocky Mountain Bank of Plains and Russell B. Icenoggle) Submitted on Briefs: October 25, 2001 Decided: December 4, 2001 Filed: _____ Clerk

Chief Justice Karla M. Gray delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Internal Operating Rules, the following decision shall not be cited as precedent. It shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number and result to the State Reporter Publishing Company and to West Group in the quarterly table of noncitable cases issued by this Court. ¶2 C. Cox appeals from the decision of the Twentieth Judicial District Court, Sanders County, dismissing his complaint to set aside a sheriff's sale of real property. Cox states five issues for appeal, but his lack of standing as a real party in interest precludes our consideration of any of those issues. We dismiss the appeal. ¶3 Cox's complaint filed in the District Court seeks to set aside a sheriff's sale of real property on grounds that the sale did not comply with statutory procedural requirements. Title to the real property sold at the sheriff's sale was held by a corporation, 1804, Inc., of which Cox was a shareholder and President. Cox, who is not an attorney, also filed this appeal. ¶4 Rule 17(a), M.R.Civ.P., provides that "[e]very action shall be prosecuted in the name of the real party in interest." In a dispute involving real property, a party vested with legal title to the property is the real party in interest. Kudloff v. City of Billings (1993), 260 Mont. 371, 374, 860 P.2d 140, 142 (citation omitted). file:///C:/Documents%20and%20Settings/cu1046/Desktop/opinions/99-609%20Opinion.htm (2 of

3)3/23/2007 1:56:59 PM file:///C:/Documents%20and%20Settings/cu1046/Desktop/opinions/99-609%20Opinion.htm ¶5 Moreover, when a corporation has a legal claim, the claim cannot be brought by anyone other than the corporation. *Kondelik v. First Fidelity Bank of Glendive* (1993), 259 Mont. 446, 453-54, 857 P.2d 687, 692. As a separate legal entity, a corporation cannot appeal on its own behalf through an agent other than an attorney. *Continental Realty, Inc. v. Gerry* (1991), 251 Mont. 150, 152, 822 P.2d 1083, 1085 (citations omitted).

¶6 Under the authority set forth above, 1804, Inc., not Cox, is the real party in interest in the underlying matter. Finally, even if 1804, Inc., had filed the complaint, Cox, as a non- attorney, would not be entitled to appeal on the corporation's behalf. ¶7 Therefore, this appeal is dismissed.

/S/ KARLA M. GRAY

We concur:

/S/ W. WILLIAM LEAPHART

/S/ TERRY N. TRIEWEILER

/S/ PATRICIA COTTER

/S/ JIM RICE

file:///C:/Documents%20and%20Settings/cu1046/Desktop/opinions/99-609%20Opinion.htm (3 of 3)3/23/2007 1:56:59 PM