

SUPREME COURT OF MONTANA

In re the Support Obligation of Mark T. McGurran

2003 MT 145 (Mont. 2003) · No. No. 02-768 · Decided May 20, 2003

SUMMARY

The Montana Supreme Court reviewed the dismissal of a petition for judicial review concerning a child-support modification order. The Court held that the petitioner’s reliance on notice suggesting Montana Administrative Procedure Act service procedures provided sufficient service and that dismissal for failure to comply with the more stringent statutory service requirements violated due process. The Court reversed and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Karla M. Gray; James C. Nelson; Jim Regnier; Patricia Cotter; Jim Rice
JURISDICTION	Montana
DECIDED	May 20, 2003
DOCKET	No. 02-768
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Udelhoven appealed the First Judicial District Court's dismissal of her petition for judicial review of a CSED child-support order for lack of subject matter jurisdiction.
STANDARD OF REVIEW	A ruling on a motion to dismiss is reviewed for abuse of discretion; a determination concerning subject matter jurisdiction is reviewed for correctness as a conclusion of law; and constitutional questions are reviewed de novo or plenary.
PRECEDENTIAL VALUE	published and precedential Montana Supreme Court opinion
PARTIES	Debra L. Udelhoven v. Mark T. McGurran, Montana Department of Public Health and Human Services, Child Support Enforcement Division

TOPICS

- child support
- judicial review of agency action
- service of process
- due process
- appellate procedure

PRACTICE AREAS

family law

administrative law

constitutional law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether dismissal of Udelhoven's petition for judicial review for failure to comply with the personal-service requirements of § 40-5-253(4), MCA, violated due process when CSED's notice indicated that MAPA service procedures applied.
2. Whether the untimeliness of Udelhoven's request for arbitration deprived the district court of subject matter jurisdiction over her petition for judicial review.

HOLDINGS

1. When CSED's notice reasonably suggests that a petition for judicial review may be served under MAPA procedures, enforcing the more stringent personal-service requirements of § 40-5-253(4), MCA, against a party who relied on that notice violates due process. Udelhoven's mailing of the petition to McGurran's attorney was sufficient service under the applicable MAPA procedures, and the district court erred by dismissing the petition.
2. The untimeliness of a request for arbitration may support affirmance of the denial of arbitration, but it is not jurisdictional for purposes of seeking judicial review in district court when the petition for judicial review itself was timely filed.

KEY QUOTATIONS

“That reliance resulted in her failure to properly serve her petition for judicial review and, ultimately, denial of a meaningful opportunity to be heard.” (¶ 22)

“Therefore, we hold that the District Court erred in dismissing Udelhoven's petition for judicial review.” (¶ 22)

FACTUAL BACKGROUND

CSED issued a modification consent order concerning Mark McGurran's child-support obligation and notified Debra Udelhoven that she could challenge it through arbitration. CSED denied Udelhoven's arbitration request as untimely and notified her that she could seek judicial review under the Montana Administrative Procedure Act. Udelhoven timely filed a petition for judicial review and mailed copies to CSED and McGurran's attorneys, but McGurran was not personally served until after the thirty-day service period in § 40-5-253(4), MCA. The district court dismissed the petition for lack of subject matter jurisdiction.

PROCEDURAL HISTORY

CSED issued a modification consent order concerning McGurran's child-support obligation and denied Udelhoven's request for arbitration as untimely. Udelhoven filed a petition for judicial review in the Tenth Judicial District Court and initially mailed the petition to the parties' attorneys. After venue litigation and remand in an earlier appeal, McGurran was personally served beyond the statutory thirty-day period. The parties stipulated to transfer venue to the First Judicial District, which dismissed Udelhoven's petition for failure to

comply with the service requirements of Montana Code Annotated § 40-5-253(4). The Montana Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion on Udelhoven's petition for judicial review.

CASES CITED

- In re McGurran, 1999 MT 192, 295 Mont. 357, 983 P.2d 968
- In re McGurran, 2002 MT 144, 310 Mont. 268, 49 P.3d 626
- Pickens v. Shelton-Thompson, 2000 MT 131, 300 Mont. 16, 3 P.3d 603
- Peterson v. Great Falls School Dist., 237 Mont. 376, 773 P.2d 316 (1989)
- Pearson v. Virginia City Ranches Ass'n, 2000 MT 12, 298 Mont. 52, 993 P.2d 688
- Hilands Golf Club v. Ashmore, 277 Mont. 324, 922 P.2d 469 (1996)