

No. 13113

IN THE SUPREME COURT OF THE STATE OF MONTANA

1976

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JACK B. GEHRING,

Plaintiff and Appellant,

-vs-

W. E. WARNER: All State of Montana  
Department of Revenue Employees and/or  
agents,

Defendants and Respondents.

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Appeal from: District Court of the First Judicial District,  
Hon. Nat Allen, Judge presiding.

Counsel of Record:

For Appellant:

Jack Gehring, Pro Se, Helena, Montana

For Respondents:

R. Bruce McGinnis, Helena, Montana

Argument Submitted on Briefs

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Submitted: January 26, 1976

Decided: FEB 19 1976

Filed:       

*Thomas J. Kearsney*  
\_\_\_\_\_  
Clerk

PER CURIAM:

Plaintiff filed a petition in the district court, Lewis and Clark County, seeking injunctive relief against the Montana Department of Revenue and its agents. The district court dismissed the petition for failure to state a claim. Plaintiff appeals from this dismissal.

Plaintiff is Jack B. Gehring who filed a petition pro se in the district court in which he " \* \* \* requests a injunction to restrain defendants from injuring in any way Jack B. Gehring life, liberty or property without a trial by jury." and " \* \* \* from proceeding with any future, present proceedings in any commutations, leins, sales and to include any other such action \* \* \*."

Defendants filed a motion to dismiss the petition or complaint on the ground that it failed to state a claim upon which relief could be granted. Following a hearing at which plaintiff was given an opportunity to bring out the facts underlying his claim for relief, the district court, the Hon. Nat Allen, district judge presiding, granted the motion to dismiss. An order and judgment of dismissal was entered on July 1, 1975. Plaintiff appeals.

The issue on appeal is whether plaintiff's petition or complaint was properly dismissed. We affirm the district court's dismissal.

The petition or complaint fails to state any facts entitling plaintiff to injunctive relief as required by section 93-4205, R.C.M. 1947. No statement or allegations are made concerning what the department of revenue or its agents is doing or threatening to do. Apparently there is some dispute or conflict between plaintiff and the department of revenue but we are left in the dark as to what it is.

The district judge pointed this out to plaintiff at the hearing:

"JUDGE ALLEN: Mr. Gehring, I don't see facts in this petition, do you?"

"MR. GEHRING: The fact that they wanted to sell my property is enough fact."

"JUDGE ALLEN: It doesn't say that in this petition. What property and where does it say anything about it?"

"MR. GEHRING: I would not know."

"JUDGE ALLEN: If you don't know this Court doesn't know. The motion is sustained and this case is dismissed and this Court is adjourned."

No factual basis for injunctive relief appearing, the petition or complaint of the plaintiff was properly dismissed by the district court.

Affirmed.