

No. 93-074

IN THE SUPREME COURT OF THE STATE OF MONTANA

1993

WILLIAM w. ROCHE,

Petitioner and Appellant,

-v-

NANCY SABO, Justice of the Peace,
Ravalli County,

Respondent and Respondent,

and

PATRICK HOWARD,

Intervenor.

APPEAL FROM: District Court of the Twenty First Judicial District,
In and for the County of Ravalli,
The Honorable Jack L. Green, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

William W. Roche, Grantsdale, Montana (pro se)

For Respondent:

George C. Corn, Ravalli County Attorney, Hamilton,
Montana; Patrick R. Howard, Hamilton, Montana (pro
se)

FILED

JUN 10 1993
Filed:

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

Submitted on Briefs: May 27, 1993

Decided: June 10, 1993



Clerk

Justice James C. Nelson delivered the Opinion of the Court.

This is an appeal from the Fourth Judicial District, Ravalli County, wherein the District Court vacated a Peremptory Writ of Mandamus dated May 29, 1992: dismissed the "Complaint at Law for a Peremptory Writ of Mandamus" of William W. Roche, Petitioner and Appellant herein; awarded attorney fees to Intervenor Patrick Howard; and remanded to the Justice Court for further proceedings. We affirm.

William W. Roche was a defendant in an unlawful detainer/eviction case in the Justice Court of the Hon. Nancy Sabo, Ravalli County Justice of the Peace.

After a bench trial, the Justice Court found against Mr. Roche and ordered his eviction for nonpayment of rent. Mr. Roche filed his Notice of Appeal from the Justice Court judgment, but failed to perfect the appeal by filing the statutory undertaking prescribed by § 25-33-201, MCA. The appeal was subsequently dismissed.

Mr. Roche then filed a "Complaint at Law for a Peremptory Writ of Mandamus" in the District Court. Patrick Howard, the plaintiff/landlord in the Justice Court action, successfully moved to intervene in the District Court case, and, in due course, moved for judgment on the pleadings. Judge Sabo joined in the motion. The District Court, stating that it considered matters outside the pleadings, treated the intervenor's motion as one for summary judgment and entered its Findings of Fact, Conclusions of Law and Order which found, inter alia, that Mr. Roche's approach to the case was designed to frustrate the lawful, final judgment of the

Furthermore, with respect to appeals from Justice Court, Section 25-33-101, MCA, provides:

Exclusive Method of Review. A judgment or order in a civil action, except when expressly made final by this code, may be reviewed as prescribed in this chapter and not otherwise. A party aggrieved may appeal in the cases prescribed in this chapter. (Emphasis added.)

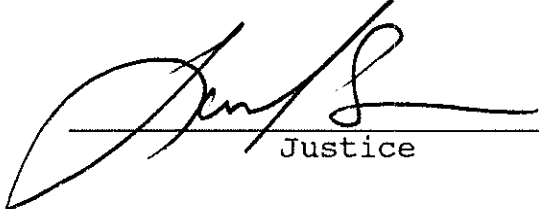
Mr. Roche's exclusive method of review of the Justice Court judgment was by way of appeal and trial de NOVO in District Court. In failing to properly exercise that right of appeal, he is not entitled to use mandamus as a substitute.

Finally, we find no abuse of discretion by the District Court awarding Intervenor Howard his attorney fees under the circumstances of this case. The District Court found that:

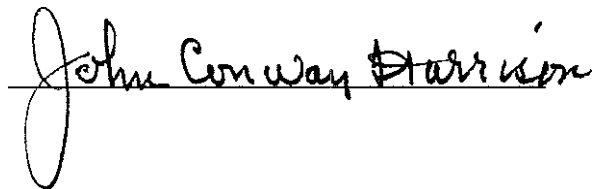
Mr. Roche's approach to this case has been one designed to frustrate the lawful judgment of the Justice Court and prolong these proceedings for his personal financial gain and with complete disregard for the law and proper procedure. In such a case an award of attorney fees and costs is proper and fitting.

In *Christopherson v. State* (1987), 226 Mont. 350, 355, 735 P.2d 524, 527, we upheld the District Court's award of attorney fees to an intervenor in a mandamus action pursuant to the Court's equity powers. Similarly, we find that the award of attorney fees is supported by the record and was within the equity powers of the Court in this case.

Affirmed.


Justice

We Concur:



~~Karla M. Gray~~
~~William E. Hunter~~

~~Tom Frawley~~
Justices

June 10, 1993

CERTIFICATE OF SERVICE


I hereby certify **that** the following order was sent by United States mail, prepaid, to the following named:

William W. **Roche**
604 N. Third St.
Hamilton, MT 59840

George H. Corn
County Attorney
Ravalli County Courthouse, Box 5008
Hamilton, MT 59840

Mr. Patrick R. Howard
361 Cartwright Way
Hamilton, MT 59840

ED SMITH
CLERK OF THE SUPREME COURT
STATE **OF** MONTANA

BY:  _____
Deputy