

No. 12422

IN THE SUPREME COURT OF THE STATE OF MONTANA

1973

JUMPING RAINBOW RANCH,
A Montana corporation,

Plaintiff and Respondent,

-vs-

RICHARD J. CONKLIN and
MRS. RICHARD J. CONKLIN,
his wife et al,

Defendants and Appellants.

Appeal from: District Court of the Sixth Judicial District,
Honorable Jack D. Shanstrom, Judge presiding.

Counsel of Record:

For Appellants:

Richard J. Conklin argued, White Sulphur Springs,
Montana.

For Respondent:

Landoe and Gary, Bozeman, Montana.
Ronald K. Olson argued, Bozeman, Montana.
Arnold Huppert, Jr., Livingston, Montana.

Submitted: March 28, 1973

Decided: MAY -2 1973

Filed: MAY -2 1973


Clerk

Honorable Edward T. Dussault, district judge, sitting in place of Mr. Chief Justice James T. Harrison.

This is an appeal from an order in a quiet title action extending a temporary restraining order or injunction, restraining the county assessor of Park County from assessing certain lands located in said county and being claimed by appellants Conklin and Orser.

The district court extended the injunction order for 90 days on October 2, 1972.

This appeal must be dismissed for two reasons:

The question of the extension of the restraining order or injunction became moot prior to the date of the hearing on this appeal. From the order itself it appears that the extension expired on January 3, 1973.

Secondly, the notice of appeal filed October 30, 1972 reveals only an appeal on behalf of defendants Conklin and Orser and not the Park County assessor, Homer K. Langley, the real party in interest.

No showing was made that the Park County attorney represented the county assessor at any stage of the proceedings thus far in district court or that the county assessor has ever authorized appellant's attorney to represent him in any part of the proceeding in district court on this appeal.

In *Wilson v. State Highway Comm'n*, 140 Mont. 253, 257, 370 P.2d 486, this Court said:

" * * * This court has power, sua sponte, to dismiss any appeal which does not present an actual justiciable controversy. *Gill v. Liquor Control Board*, 133 Mont. 505, 326 P.2d 974." *Olsen v. United Benefit Life Ins. Co.* 150 Mont. 147, 432 P.2d 381.

The appeal is dismissed and the matter is remanded to the district court for trial on the merits.

Edward T. Dussault

Hon. Edward T. Dussault, district
judge, sitting in place of Mr. Chief
Justice James T. Harrison.

We concur:

John Conway Harrison

Paul J. Havel

Wesley Castles

Sam J. Daly

Associate Justices